In the Khamovnichesky District Court
of the city of Moscow
to Federal judge V.N. Danilkin
from
M.B. Khodorkovsky

MOTION

Honourable Court! Mr. Lakhtin has on numerous occasions declared in court that the technological process of producing, treating, and delivering oil into Transneft is not the subject of the judicial examination, and, on the contrary, has himself asked questions about the transfer of rights of ownership to oil in the Transneft system, about the fate of the proceeds of the Tomskneft company from the realisation of oil, etc.

Art. 8 of the CrimC RF [Criminal Code of the Russian Federation] requires confirmation in court of all the features of the *corpus delicti* of an imputed crime, as the basis for criminal liability.

The ECHR has on many occasions confirmed the requirement of the Convention on the Protection of Human Rights on the observance of the principle of legal certainty.

Brought against me is a charge of theft of oil, classified under Art. 160 CrimC RF. The fact of the bringing of specifically this charge (*i.e.* the charge of theft of oil from Samaraneftegas, Yuganskneftegas, Tomskneft by way of embezzlement) was confirmed personally by Mr. Lakhtin on 12.03.09.

I have on numerous occasions asked the party of the prosecution to clarify the charge for me. Furthermore, I have asked the prosecution to report if I ought to be defending myself against another charge, differing by subject, method or victim. I ask about this now once again.

Inasmuch as the party of the prosecution is not declaring about changing the subject, method, or victims in the process, then I bring the attention of the court [to the fact] that such a property right as the right of ownership to the oil was not declared as a subject of the judicial examination. Furthermore, the legislator rules out entirely the application to it of the term "theft", but speaks only of the possibility of acquiring the right, Art. 159 CrimC RF.

The reason for this is understandable to any lawyer, and it is not my task to clarify elementary questions of law to Mr. Lakhtin. Analogously, inasmuch as Mr. Lakhtin recognises Transneft as the lawful owner of the mixture of oils, then out of Transneft one can steal oil only from Transneft, and not from one of the deliverers of one of the parts of this mixture. This is also an elementary question of law.

In such a manner, the theft of oil from Samaraneftegas, Tomskneft and Yuganskneftegas is possible only at the stage from its appearance in nature to the Transneft metering station. Before the appearance of the oil in nature, Samaraneftegas, Tomskneft and Yuganskneftegas do not have it yet; after delivery into Transneft and mixing – [they] do not have [it] once again.

To indicate the concrete place of the theft the prosecution has refused, which leads to the necessity of clarifying a physical possibilities for such seizure and conversion along the entire technological [process] chain, from wellhead to Transneft pipe, not even speaking about the fact of such a seizure.

The feature of the lawful or unlawful seizure specifically of oil, and not of the property rights to it, with the subsequent conversion of the oil, is a mandatory feature of the theft of this concrete property of another (Art. 158 note 1 CrimC RF).

The feature of causing harm to the concrete owner or possessor Samaraneftegas, Tomskneft and Yuganskneftegas is mandatory (see *ibid.*).

And on the contrary, an attempt to raise before the court a question about the reality of undisputed transactions, about the reality of undisputed decisions of the Board of Directors, the general meeting of shareholders or the executive bodies of companies is a direct and obvious overstepping of the bounds of the charge that has been brought by subject (oil and property rights); furthermore, [it] is found in direct contradiction with the charge that has been brought by method of embezzlement, *i.e.* in secret from the person adopting the decision, or by deceit, *i.e.* by way of a criminally prohibited method of influencing the will of the person adopting the decision, but obviously with the presence of his expression of will.

So [which is it? –] in secret or openly? Oil or property rights?

If we keep ourselves within the limits of Art. 252 CCrimP RF [Code of Criminal Procedure of the Russian Federation], then my questions to the witnesses are obviously relevant, while the relevance of Mr. Lakhtin's questions the court ought to have been asking him to clarify. That the court is not doing this bears witness, I deem, not to the incompetence of the

court, but to its non-impartiality and breach of the equality of arms in the [trial] process. Inasmuch as for me it is obvious that the esteemed judge can not but understand how Mr. Lakhtin has gotten egg on his face, having imputed the theft of oil, yet arguing anything at all but the fact of its seizure in secret from the owner. Apropos, the bill of indictment talks about seizure on pg. 92 (in part).

I want to declare to the court: I am prepared for a defence against the charge of acquiring rights to oil "by way of deceit", but such a charge needs to be brought, it needs to be indicated what is the cause-and-effect connection between the reporting by me to some subject of some kind of information and the adoption by this subject of some kind decision contradicting his true will. The subject, I shall remind, in the grand scheme of things, is me myself.

I await with interest the abandonment of the charge of embezzlement of the oil and its replacement with a mutually exclusive charge of acquisition of the right to the oil by way of deceit. Then I will defend myself.

I am prepared for a defence from another mutually exclusive charge of embezzlement of the proceeds; after all, the proceeds, before they could have been embezzled, had to have been received by the victims for oil that was sold.

I am prepared to account for any part of the proceeds as soon as Lakhtin abandons the charge of embezzlement of the oil, declares that the oil was not stolen from Samaraneftegas, Tomskneft and Yuganskneftegas, but was sold, and that I had stolen the proceeds. Forward! I await with interest.

For now, though, within the confines of the declared subject – oil, the declared method – embezzlement, the declared victims - Samaraneftegas, Tomskneft and Yuganskneftegas, - if you please, speak about the seizure from them of oil at a sector where this oil was found in their ownership or possession, pursuant to Art. 160 and 158 CrimC RF and Art. 252 CCrimP RF), and do not attempt in an unlawful manner to discuss the grounds for the obtaining of rights of ownership to the oil by third parties, in particular by YUKOS, which is not a party in the [trial] process.

If you want to argue about the validity of the transactions – file a lawsuit and let's go. If you don't want to - don't drag witnesses and the court into a discussion of a question that is not relevant to the given judicial examination.

Do you want to challenge a decision of a general meeting of shareholders, a Board of Directors, as having been adopted under the influence of deceit? File a lawsuit or change the charge by subject and method. Do not drag the court into a discussion of an irrelevant question about the procedure for the generating of the will of legal entities at sessions of a general meeting of shareholders and a Board of Directors. In the framework of the given [trial] process, this is no more than slander.

Your Honour, if state prosecutor Lakhtin, as a consequence of his fantastic incompetence, is incapable of understanding what charge he has brought, and, this means, - not capable of determining the relevance of questions to witnesses, then I can recommend nothing to you, Your Honour, besides special rulings, but I do ask [you] to obligate Mr. Lakhtin not to impede a lawful questioning.

M.B. Khodorkovsky