



October 27, 2010

His Excellency Dmitry Medvedev  
President, Russian Federation  
Ilinka Str, No 23  
103132, Moscow  
Russia

Dear President Medvedev,

We, the undersigned, wish to convey our deep concern regarding the ongoing prosecution of Mikhail Khodorkovsky and Platon Lebedev before the Khamovnicheskiy Court in Moscow. The circumstances under which prosecutors brought criminal charges against the defendants, combined with numerous allegations of misconduct that have plagued this and their previous criminal trial, call into question your administration's commitment to the rule of law and the legitimacy of the proceedings. As the legal proceedings in the most recent case near their end, we urge you to call on prosecutors to drop the charges against Mr. Khodorkovsky and Mr. Lebedev and to release them from detention.

As you are aware, for the past seven years the former owner of the oil company Yukos, Mikhail Khodorkovsky, and his business associate Platon Lebedev have faced a series of criminal charges in connection with their business activities from 1994 to 2004. In May 2005, following a two-year investigation and trial, a Russian court found Mr. Khodorkovsky and Mr. Lebedev guilty of fraud, evading taxes stemming from the sale of Yukos' oil, and other charges. Each was sentenced to nine years' imprisonment, although the verdicts were reduced to eight years' imprisonment following an appeal.

In February 2007, as the men approached eligibility for parole, having served nearly half of their original sentences, prosecutors filed new charges against them, accusing them of theft and embezzlement of oil produced by Yukos from 1998-2003, among other claims. Prosecutors began to read their closing arguments in the case on October 14, 2010. The men face maximum prison sentences of 15 years if convicted.

Mr. Khodorkovsky and Mr. Lebedev's first trial was marred by allegations that government officials committed a number of serious procedural violations and engaged in intimidation and harassment of prospective witnesses and defense counsel during the course of the investigation and subsequent trial. In October 2007, the European Court of Human Rights affirmed these allegations in part, determining that Russian officials had violated Mr. Lebedev's rights during his arrest and pre-trial detention—a finding that the Russian Supreme Court upheld on December 23, 2009. In January 2005, in part as result of these allegations, the Parliamentary Assembly for the Council of Europe (PACE) concluded that “the circumstances of the arrest and prosecution of leading Yukos executives suggest that the interest of the State's action in these cases goes beyond the mere pursuit of criminal justice to include such elements as to weaken an outspoken political opponent, to intimidate other wealthy individuals, and to regain control of strategic economic assets.”

From the outset, the timing of prosecutors' decision to pursue a second prosecution of Mr. Khodorkovsky and Mr. Lebedev added credence to claims that the proceedings were motivated by political considerations.

Since 2007, Russian authorities have repeatedly engaged in conduct that appears to violate the defendants' rights to due process and a fair trial. This conduct includes the following:

- Prosecutors initially charged Mr. Khodorkovsky and Mr. Lebedev with a number of vaguely-articulated offenses, including embezzling a quantity of oil exceeding Yukos' entire output during the period in question. The charges are particularly troubling given that the defendants' previous convictions relate to their alleged failure to pay taxes on oil sold by Yukos during the same period. After observing the trial in April 2010, Francois Zimeray, France's Human Rights Ambassador, echoed many international observers in stating, “It seems odd that Khodorkovsky could be sentenced twice on facts which look the same, or even contradictory,” and noted “the charges seem to be so unclear...the defense does not even know what the precise charges are.” In a move that appears to validate concerns regarding the imprecision and implausibility of the charges, on October 18, during the presentation of their closing arguments, prosecutors suddenly reduced the amount of oil they alleged the defendants stole by 131 million tons, citing arithmetic errors and a lack of evidence.
- On several occasions, defense counsel have alleged intimidation on the part of Russian authorities. Law enforcement authorities conducted an extensive search of members of the legal team at a Moscow airport in 2007 as they attempted to travel to Chita, the site of the Siberian pre-trial detention facility at which Mr. Khodorkovsky and Mr. Lebedev were held prior to the beginning of their second trial; also in 2007, the office of the Prosecutor General filed a complaint against Karinna Moskalenko, a member of the legal team, seeking her disbarment on the grounds that she failed to adequately represent Mr. Khodorkovsky, despite the fact that he rejected this claim.

- Defense counsel have also alleged that Russian authorities engaged in a series of coordinated acts of intimidation designed to coerce Yukos' former auditors at the Russian office of the accounting firm PricewaterhouseCoopers (PWC) to withdraw audits they produced that accounted for all of the oil flows Mr. Khodorkovsky and Mr. Lebedev were accused of embezzling. PWC claims that it withdrew its audits in 2007 in response to new information provided by prosecutors. However, in 2006, prior to the withdrawal, Russian tax authorities filed two civil suits against PWC, claiming that it had underpaid its taxes and that it had conspired with Yukos to assist it in evading taxes. Investigators raided PWC's office in March 2007, citing criminal tax claims, and authorities interrogated staff members about the 2007 embezzlement charges against Mr. Khodorkovsky and Mr. Lebedev. Following six interrogation sessions, the head of PWC's Moscow office withdrew the Yukos audits in June 2007. The following day, the senior prosecutor on the Yukos case wrote PWC a letter stating that the company would not be investigated on criminal charges related to the Yukos audits. Prosecutors closed the ongoing criminal tax and Yukos-related investigations of PWC within days, and over the course of the following months, Russian courts reversed each of the decisions rendered against PWC in the civil tax proceedings.
- On at least two occasions, Mr. Khodorkovsky was subjected to arbitrary disciplinary measures in detention. Mr. Khodorkovsky was denied parole in August 2008 in part on the grounds that he refused to take part in vocational training in sewing. In October 2008, he was placed in solitary confinement for 12 days for giving a written interview to the Russian edition of Esquire magazine, despite the fact that the interview had previously been approved.
- Russian officials are alleged to have committed serious human rights abuses, in one case arguably amounting to torture, with respect to at least two witnesses in the cases against Mr. Khodorkovsky and Mr. Lebedev. Russian authorities denied former vice-president of Yukos, Vasilii Aleksanian, adequate medical treatment and held him in unsanitary conditions of pre-trial detention for more than one year following his diagnosis with HIV in November 2006. Aleksanian reported that prison officials offered to provide him with treatment in exchange for statements incriminating Mr. Khodorkovsky beginning in November 2007. Russian officials ignored repeated calls for corrective action by the European Court of Human Rights and declined to transfer Mr. Aleksanian to a hospital until February 2008, at which point Mr. Aleksanian was suffering from a number of additional HIV/AIDS-related illnesses. In April 2009, former Yukos manager Antonio Valdes-Garcia, who now resides in Spain, released a statement and a petition seeking to initiate criminal charges against investigators in the 2005 case against Mr. Khodorkovsky and Mr. Lebedev. Mr. Valdes-Garcia alleged that in 2005, he voluntarily traveled to Russia from Spain for questioning by prosecutors in relation to the case, but investigators beat and threatened him when he refused to give testimony implicating Mr. Khodorkovsky and Mr. Lebedev and then coerced

him into signing a statement indicating that he had incurred his injuries in an accidental fall from a window. Authorities responded to the claims by increasing pending criminal charges against Mr. Valdes-Garcia in Russia.

- Counsel for Mr. Khodorkovsky and Mr. Lebedev have argued that the court has refused to take corrective steps to address claims of harassment and intimidation of prospective witnesses for the defense. In August 2010, the judge rejected a request by the defense to allow another key witness to make a court appearance via video conference from Germany or to have a statement he provided to defense counsel entered into the record, despite the fact that the witness credibly alleged that Russian authorities had threatened him with harm should he return to Russia.
- Lawyers for Mr. Khodorkovsky and Mr. Lebedev have pointed to a myriad of instances in which presiding Judge Viktor N. Danilkin has refused to take corrective steps to address prosecutorial misconduct or has unjustifiably denied defense counsel the opportunity to bring potentially exculpatory evidence and the testimony of defense witnesses to the court's attention. These include the court's failure to compel prosecutors to submit wiretap recordings to defense counsel and the court, the alleged transcripts of which the court permitted prosecutors to submit into evidence. Defense counsel argue that the judge has refused to compel the production of records from the state-owned entity which defense counsel claim possesses records that would resolve whether Yukos oil was in fact sold and transported through Russia's pipeline network—an issue which is fundamental to the prosecutors' theory of the case. Counsel have alleged that Judge Danilkin has refused to require prosecutors to produce case materials from a potentially exculpatory appellate-level proceeding elsewhere in Russia, despite the fact that the court confirmed that it sent the case files to prosecutors. They have also alleged that Judge Danilkin has refused to exclude seriously flawed translations of documents submitted into evidence by prosecutors or to require prosecutors to correct the errors. Finally, they allege that he has refused to correct a tendency by the court to exclude the defense's legal reasoning presented in motions and in-court statements from official trial transcripts, a practice which seriously distorts the trial record and could jeopardize a future appeal.

The conduct of prosecutors and judicial officials during the second criminal investigation and trial adds significant weight to allegations that the state's pursuit of Mr. Khodorkovsky and Mr. Lebedev is being driven by political motivations. For these and other reasons, the courts of a number of other states, including the United Kingdom, the Netherlands, Cyprus, Liechtenstein, Lithuania, and Switzerland, have rejected requests from Russian prosecutors seeking various forms of cooperation in connection with Yukos-related proceedings. The highest court in Switzerland, the Swiss Federal Tribunal Court, ordered the government not to cooperate with the Russian authorities after it concluded that the first trial was politically motivated and that there had been violations of the defendants' fair trial rights throughout the procedure.

Similarly, a British court, the Bow Street Magistrates Court in London, refused a series of extradition requests made by the Russian authorities seeking the return of Russian nationals allegedly in connection with the so-called Yukos Affair. On March 18, 2005, this court refused to extradite former Yukos employees Dmitry Maruyev and Natalia Chernysheva, and on December 23, 2005, a similar request for extradition of Yukos vice president and deputy managing chairman Alexander Temerko was denied. In each case the extradition request was rejected on the grounds that, if extradited, those accused would not receive a fair trial. In July 2010, Nobel Peace Prize Laureate Eli Wiesel called for Khodorkovsky's release, saying, "The reason for his arrest and condemnation has nothing to do with the law. It has to do with politics."

Mr. Khodorkovsky and Mr. Lebedev are by no means the only individuals in Russia who have been subjected to criminal proceedings lacking in due process and basic standards of fairness. However, the suspicious circumstances surrounding the initiation of the case and the accumulation of serious allegations of prosecutorial and judicial misconduct, including serious, enduring flaws in the charges on which the men are being tried; allegations that serious procedural errors committed by prosecutors were consistently tolerated by the court; and evidence suggesting that investigators engaged in intimidation, harassment, beating, and denial of necessary medical treatment to witnesses and defense attorneys, have given rise to a widespread impression that the prosecution of Mr. Khodorkovsky and Mr. Lebedev is being undertaken for political purposes, contrary to human rights guarantees that Russia has pledged to uphold. Given the seriousness of the abuses alleged, the undersigned organizations believe that the independence and legitimacy of the Russian judiciary have been irreversibly compromised in these proceedings. We recommend that you take immediate steps to ensure that the charges against Mr. Khodorkovsky and Mr. Lebedev are dropped and that they are released from detention. These steps would demonstrate your administration's commitment to safeguarding human rights and strengthening respect for the rule of law in Russia in the future.

Thank you for your attention to this matter.

Sincerely,

Freedom House  
Human Rights First  
Human Rights Watch

International League for Human Rights  
Jacob Blaustein Institute for the Advancement of  
Human Rights

*Cc:*

*Minister of Justice, Alexander Kononov*  
*Federal Ombudsman for Human Rights, Vladimir Lukin*  
*Ambassador to the United States, Sergey I. Kislyak*