THE CASE OF MIKHAIL KHODORKOVSKY: FACTS AND COMMENTARY

1. The 6th anniversary of the day of M.B. Khodorkovsky's arrest is a bit more than a month away. That the case is political no longer requires proof today. This fact is recognised by a multitude of court decisions in ten countries, has found its reflection in resolutions of the US Congress, the German Bundestag, the Parliamentary Assembly of the Council of Europe. Prominent state and political figures, authoritative human rights organisations have declared about this more than once. The presence of political motives in the YUKOS case is denied only by staff and absolutely unscrupulous propagandists. All other observers, including state officials of different levels, recognising the political motivation of the prosecutions, diverge only in its causes.

2. Nevertheless, today we consider it appropriate to remind about certain facts bearing witness to the fact that the prosecution of M. Khodorkovsky was begun and continues to be carried out not by the General Prosecutor's Office, not by the Investigative Committee. This is the ruling authoritarian regime that has pounced with all its might on a person who violated the rules of behaviour for business established by the Kremlin. Can you imagine? Instead of building palaces on the Cote d'Azur, buying yachts and soccer teams, this strange person began to openly fund opposition parties, putting huge money into educational and other humanitarian projects, and on top of all that, he even dared to declare to the president's face that his retinue is corrupt.

3. M. Khodorkovsky was too noticeable a figure in the country and the world to resolve right away back then, in 2003, to lock him up. Despite the initiated criminal case, even after the arrest of P. Lebedev they not only did not bar exit from the country for him, they even began to intensively let it be understood that the best way out for him was – emigration. And this was an ideal way out for those who had already set their sights on the best oil company in the country. Although you can plunder a house in the presence of the owner as well, it is more convenient and easier to take property away from an "oligarch who has fled from justice".

4. A multitude of facts bear witness that all the repressions that descended upon M. Khodorkovsky and YUKOS bore a coordinated character and were planned at the very top level of power. The most diverse agencies, not subordinated to one another – the General Prosecutor's Office, and subsequently the Investigative Committee too, the Ministry of Justice, the MVD, the FSB, Rosimushchestvo, tax inspectorates, the Federal Service for the Execution of Punishments, general jurisdiction and commercial courts of all levels worked consistently and only in one direction. The State Duma adopted laws specially "for the case of M. Khodorkovsky" at the first signal, applied the brakes (and continues to do so) on all bills that could even in the slightest way ease his lot.

5. An instruction was given to the controlled mass media to organise mighty PR support. The quantity of the lies that have descended on M. Khodorkovsky can be compared only with how they used to vilify "enemies of the people" in the Stalinist time. Specially shot slanderous films were shown on the central channels. Whole books were written. Letters from "famous people" have been organised (here, it is true, they did not manage without some glitches). The only thing

missing has been mass rallies at factories and on collective farms, where the toilers would demand that all enemies of the people be shot "like rabid dogs"…

6. As a result, they have indoctrinated a significant part of the people to believe that M. Khodorkovsky has not only robbed everybody, but that he intended to sell YUKOS to Americans, change the state order, become president of Russia and achieve its unilateral nuclear disarmament. Supposedly he had directly promised the latter to Condoleeza Rice… (I judge by the questions that citizens have asked me many a time on the interactive air of several radio stations)
As we can see, Putinite propaganda was acting using the well-known recipes of doctor Goebbels.

7. The quantity of violations of the rights of the accuseds, allowed at all stages of this trial that is unprecedented in recent history, has transformed it into a mocking parody of justice. The investigation, both in the first case and in the second, can be compared to a game with a single set of goalposts. Having seized a huge quantity of documents, including all the reporting of YUKOS, the investigation arbitrarily slapped together cases, having attached to them only that which, from its point of view, works for the prosecution. All the motions of the party of the defence about replenishing the case materials with documents that will help establish the truth and create a proper picture of the operational and financial activity of the company were rejected either completely without any explanation, or under demagogic pretexts. The same thing took place during the judicial examination of the first case. The court denied satisfaction of motions on the summoning and questioning of experts giving opinions laid at the foundation of the charge. Simultaneously, it refused to attach expert opinions and other materials obtained through defence queries. The reasons for the denial were at times simply laughable! Thus, the Meshchansky Court explained a refusal to attach a copy of a court decision with respect to one of the cases examined earlier, executed on the corresponding blank and certified with a seal, by saying that the "heraldic shield is absent" in the depiction of the coat of arms on the proprietary seal. Later it became clear that this shield is absent on the blanks of the Meshchansky Court itself, but this did not change anything already.

8. Things improbable from the point of view of legality and common sense took place after the issuance of the verdict. Unexpectedly, before the completion of all the procedures associated with the studying by the lawyers of the trial record and the submission of detailed cassation appeals, the case was sent to the Moscow City Court, moreover the cassation examination of the case, consisting, approximately, of 500 volumes, was scheduled for 7 days (!) after its submission… And the city judges were ready to examine it! I involuntarily recalled how, appearing in 1899 in the Court of Cassation in the famous case of A. Dreyfus, the prosecutor thanked the judges for "having been able to study 7 volumes of the criminal case in a mere 6 months"…

9. It looks as if the main reason for this obscene rush were upcoming elections to the State Duma, and a plan to remove M. Khodorkovsky far away from Moscow had already come to fruition "upstairs". But he had also sent to the electoral commission a letter with a request to register him as a candidate for deputy (naturally, not counting on election, but hoping that, as a registered candidate, he would get at least some kind of access to the press). A naive person! Back then he still believed that at least some kind of legality exists for him in the country.

This letter took more than three weeks to get to the commission and it got there… the next day after the cassation examination, when the question of registration automatically fell away on the strength of the law.

10. According to the version of Art. 73 of the Penal Code of the RF in effect at that moment, convicts were supposed to have served punishment in a colony at the place of residence, and in the absence of such an opportunity – in a colony of the region closest to it. In the administration of FSIN for the city of Moscow was had a list of such regions. Not long before the staging to a colony of M. Khodorkovsky and P. Lebedev, FSIN unexpectedly supplemented this list with Chita Oblast and the Yamalo-Nenetsk District. Does it need to be proven that this "supplement" was introduced **specifically** and **only** for our clients?

Then FSIN director Mr. Kalinin had to lie to the whole world about the "absence of places" in colonies closer than 6500 from Moscow. There are no doubts that he would never have decided on such a gross violation of current law, just like on the staging of M. Khodorkovsky to Krasnokamensk (and in a separate railcar at that!) without reliable cover from "upstairs". (By the way, in the autumn of 2008 just before the examination of a defence motion on the conditional early release of M. Khodorkovsky, a certain Kuchma was delivered from the Vladimir *centrale* to Chita by special stage, with the grossest violation of the law, with only one objective: to get from him witness testimony to discredit M. Khodorkovsky. And for this the personal power of the FSIN director was obviously insufficient; high-level cover was required).

11. In 2007, already in anticipation of the second trial, the State Duma changed Article 73, in effect granting FSIN unlimited rights with respect to the choice of the place of the serving by convicts of punishment. To the court to which we turned with an appeal we presented information from a closed report with which then former minister of justice Yu. Chaika had appeared just at this time in the Duma. He reported that as of 1 November 2005 around 150,000 places **were free** in the colonies of Russia. The defense received other confirmations as well of the presence of free places in the regions closest to Moscow, but the decision of the court had been predetermined.

12. About how M. Khodorkovsky is a suspect in a second case was declared to him back on 2 December of 2004. In June of 2005, after the issuance of the first verdict, they reported to him and P. Lebedev that the bringing of a new charge would take place in the nearest time. However, after this a different plan came to fruition in somebody's highly-placed heads. It was decided to remove both far away from Moscow, to quietly continue to conduct an unlawful secret investigation in Moscow, and then to invent a pretext for the determination of the city of Chita as the place of the preliminary investigation with respect to the second case.

13. An exception is allowed from the general rule on territorial investigative subordination established by Article 152 of the Code of Criminal Procedure of the RF: "with the objectives of ensuring fullness, objectivity, and observance of procedural terms", an investigation may be conducted not at the place of the commission of the crime, but at the place where the accused is found. In so doing, based on the sense of the norm, the "place where the accused is found" must be a certain objective reality, and not an artificially created circumstance. In the given situation,

as is said above, this place was determined completely arbitrarily. Nevertheless, in December of 2006, investigator Karimov issued, while Dep. General Prosecutor of the RF Green sanctioned the order on the transfer of M. Khodorkovsky and P. Lebedev to the investigative isolator of the city of Chita for the carrying out of investigative actions. On 3 February of 2007, against Green's signature, there appeared the next order, expected by us: about the determination of Chita as the place for the carrying out of the preliminary investigation. Naturally, under the contrived pretext of "ensuring fullness, objectivity and observance of procedural terms".

14. It goes without saying that the defence of M. Khodorkovsky and P. Lebedev appealed this order as well. And at this point a miracle occurred, an intelligible explanation for which has not been found by us to this day. Judge of the Basmanny Court of the city of Moscow Yarlykova (now already former) ruined all the plans that had been so carefully thought through in high instances. On 20.03.2007, she issued a judgment by which she found the order of Dep. General Prosecutor of the RF Green unlawful and groundless and obligated him to remedy the violation that had been allowed. On 16.04.2007, after the cassation submission of the prosecutor had been left without satisfaction by a ruling of the judicial collegium for criminal cases of the Moscow City Court, the judgment of the Basmanny District Court entered into legal force.

15. And then, something happened that seemed impossible. Article 6 of the Federal Constitutional Law "On the Court System of the Russian Federation" states: "judgments of federal courts, justices of the peace, and courts of the subjects of the Russian Federation that have entered into legal force… shall be binding on all bodies of state power, bodies of local self-administration, civic associations, official persons, other individuals and legal entities without exception and shall be subject to meticulous execution on the whole territory of the Russian Federation". In Art. 392 para 2 of the Code of Criminal Procedure of the RF, it is said that "non-execution of a verdict, ruling, judgment of a court shall entail the liability prescribed by Art. 315 of the Criminal Code of the Russian Federation". But despite this, the General Prosecutor's Office refused to execute a judgment of a court that had entered into legal force. Both investigator Karimov, and Deputy Prosecutor Green, without any restraint indicated in documents drawn up by them that they consider it unlawful and will not execute it. This same position was shared by prosecutor Lakhtin, appearing in support of motions on extending the term of detention of the accuseds.

At the end of the day, nearly a year later (!), the General Prosecutor's Office managed through the Supreme Court to force through its latest protest and to attain the repeal of a lawful and grounded judgment. There is no need to doubt that coarse pressure was exerted on the court.

16. Even a full workday will not be enough to enumerate all the violations of the rights of the accuseds that have been allowed in the course of the investigation. We shall name but some. Thus, asserting that M. Khodorkovsky and P. Lebedev had committed crimes in the composition of an organised group, the investigation completely unlawfully broke apart a single case in relation to the "members" of this same group into a series of independent ones, pursuing the goal of creating **false collateral estoppel**, which, as they are hoping, will be binding on the court examining their case, whereby to complicate the defence for the "main accuseds". Breaking apart a common case into several independent ones, the investigation arbitrarily threw the seized documentation around them all, having deprived the accuseds of the opportunity for an active

defence. By the way, the greater part of the documentation, including periodic reporting, simply disappeared, and the defence is being forced to apply super-human efforts in attempts to track down at least something. To manage this task in full volume we do not have the opportunity.
Declaring the entire business activity of the company criminal, and all its management team – an organised group, the investigation was striving to attain several objectives. First, a crime committed by a group is more dangerous to the public, and its solving – is honourable. Second, having nakedly declared that M. Khodorkovsky "distributed the roles among the members of the group", the investigation relieved itself of the necessity to prove: just what die he do **personally** that was criminal? There is simply not one single piece of evidence on this account in gthe case. Today from the testimony of Pichugin, Valdes-Garcia, Alexanyan we know by what methods the investigation had attempted to obtain testimony against M. Khodorkovsky form them. Alexanyan's testimony was confirmed likewise by former chief of the GSU SK under the General Prosecutor's Office Dovgy.

17. Many continue to this day to ask questions, why the power had a need for a second case and why all the charges could not have been combined in one trial. The defendants and the defence have explained more than once that these two charges not only can not be combined in one case, they are also mutually exclusive in general. Understanding this well, the investigation did separate these cases, having separated them by time. The charge of evasion from the payment of taxes gave an opportunity to those who were in a big hurry to divvy up YUKOS, to quickly transfer the tastiest morsels into the "right" hands (everybody remembers the foul-smelling story with Baikalfinansgrupp). Then, having waited out the time, one could declare that all the oil produced over six years was stolen from subsidiaries, which, having become in this time subsidiaries of the "right" parents, then and there declared themselves robbed and demanded to return to them everything they had once themselves considered lawfully sold.

As has already been said more than once, if one is to consider that theft had taken place, then it is obvious that YUKOS's property, including the shares in the subsidiaries, all the new equipment at the fields and refineries, *i.e.* all of the 30 bln. dollars that somebody wanted so much to take for themselves, should have been arrested and transferred to the YUKOS shareholders. The investigation was obligated before the trial to impose arrest on all stolen property and assets acquired on its account. After the trial, these assets were supposed to have gone for compensation to victims, and returned to the owners, that is… to YUKOS and its shareholders.

18. Some were astonished that the Meshchansky Court set for M. Khodorkovsky and P. Lebedev not the maximum punishment, while the Moscow City Court completely reduced it by a year. Someone managed to calculate that conditionally early they could be released before the new elections to the Duma. But, first, it is completely understandable that nobody had any intention of releasing them early. Second, today it is clear that the plan to organise a second trial, whereat to add "to the [hilt]" was simply awaiting its hour.

19. It is universally known that Russia occupies one of the first places by the scales of corruption, ceding only to several third-world countries. The financial base of the corruption, first and foremost, is ensured by the shadow economy, concealment from accounting and taxation of huge sums, which end up in the pockets of officials of all levels in the form of bribes, "kickbacks" and

a series of other ways. Khodorkovsky had in effect hurled a challenge at this established system that suited everybody, having conducted a complex of measures aimed at making the production and financial activity of the company completely "transparent", corresponding to international standards of accounting and reporting, as well as audit.

20. The vector of the present-day economic policy of the Russian power is aimed at the nationalisation of the extractive (and not only) sectors, or at increasing state participation in them. Bearing witness to this, in particular, is the unlawful acquisition by Rosneft of Yuganskneftegas, the purchase by Gazprom of Sibneft, a series of other campaigns by the power. Standing up against this arrangement of the power's was Khodorkovsky's line, his course at the creation of the largest transnational private company in Russia.

21. Khodorkovsky's political position was well known to the power, in particular about the necessity of changing the form of governance in Russia. This position he was expressing long before the arrest, while setting forth his views in greater detail in articles written already in detention. Their realisation was supposed to have led to a sharp reduction in the personal power of the president and the officials comprising his closest retinue and deathly afraid of losing their privileged position.

22. Of course, Khodorkovsky was not the only opponent of the power, but his elevated danger consisted of the presence of a mighty financial resource, which helped the bringing of his ideas to life. In particular, as is said above, Khodorkovsky openly and publicly funded opposition parties at a time when the Kremlin was trying to make the State Duma single-party and completely "tame", which it did manage to accomplish at the end of the day.

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