

Russian Federation

New trial of Mikhail Khodorkovskii and Platon Lebedev must meet international fair trial standards

Amnesty International is concerned about the ongoing failure of the Office of the Prosecutor General to respect the right of former YUKOS oil company head Mikhail Khodorkovskii and his associate Platon Lebedev to a fair trial in accordance with international standards. Amnesty International urges that the current criminal proceedings against the two men be transferred to Moscow, that the trial be held in Moscow, in accordance with Russian law and the Constitution, and that their right to a fair trial be respected.

Mikhail Khodorkovskii and Platon Lebedev were found guilty of charges including tax evasion and fraud in May 2005, and sentenced to nine years' imprisonment. The investigation and trial were marred by violations of international fair trial standards (see AI Index: EUR 46/202/2005). On appeal, both men's sentences were reduced to eight years. New charges were filed against both men in February 2007 alleging their involvement in money laundering and embezzlement. The Russian authorities should ensure they receive a fair trial. However Amnesty International is concerned that:

- the failure to respect court rulings finding the prosecutor's decision to nominate Chita as the place of preliminary investigation unlawful undermines the rule of law and brings into question whether the authorities intend to conduct the second trial of Mikhail Khodorkovskii and Platon Lebedev in line with Russian law, the Constitution and international fair trial standards;

- the two men's rights to adequate time and facilities to prepare their defence have been hindered;

- their legal team has been harassed.

Amnesty International has raised these concerns with the Office of the Prosecutor General. In reply, the Office of the Prosecutor General has stated that no violations of Russian or international law had been identified by the courts. However, this reply seems to contradict decisions passed by two Moscow courts, copies of which Amnesty International has studied (see below).

The fair trial concerns in this case highlight some of the concerns Amnesty International has about the criminal justice system in Russia, including respect for the rule of law and judicial decisions, and interference with the right to defence through the harassment and intimidation of defence lawyers.

In April 2005, Amnesty International called on the Russian authorities to ensure that Mikhail Khodorkovskii and his associates receive a fair trial which complies with Russia's obligations under the international human rights treaties

to which it is a party. Two and a half years later, the organization is repeating its call, with increased urgency, as no visible steps have been taken to address concerns which were raised by Amnesty International as well as many other human rights organizations and lawyers. Amnesty International will continue to urge the authorities to ensure a fair trial for the two men.

Right to adequate time and facilities to prepare their defence

The two men's right to adequate time and facilities to prepare their defence has been hindered by the decision by the Office of the Prosecutor General to hold the preliminary investigation of the new charges in the town of Chita, Siberia. Mikhail Khodorkovskii and Platon Lebedev were transferred from their prison colonies in Chita region and Yamalo-Nenets autonomous district respectively, to a pre-trial detention facility in the town of Chita in December 2006. The Office of the Prosecutor General in February 2007 ruled that the case should be investigated in the town of Chita, on the basis that this was where the two men were located.

However, their legal team has to travel between Moscow and Chita, as while their clients and the case files – numbering 127 volumes – are in Chita, much of the work by the legal team has to be done in Moscow. The town of Chita is between six and nine hours' flight away from Moscow, and six hours ahead in time difference, which is creating significant logistical impediments to the legal team in the preparation of their case. The legal team has informed Amnesty International that the distance is adversely affecting their preparation of a defence to the very complex and specialized set of charges. These impediments could be easily remedied by transferring the case and the accused men to Moscow.

In Amnesty International's view, these impediments to effective legal assistance in the preparation of the two men's defence amount to a violation of international fair trial standards. Article 14(3)(b) of the International Covenant on Civil and Political Rights, to which the Russian Federation is a state party, provides that "In the determination of any criminal charge against him, everyone shall be entitled.... to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing".

Moreover, a Moscow court has already ruled, in March 2007, that the decision by the Office of the Prosecutor General to hold the investigation of the criminal case opened against Mikhail Khodorkovskii and Platon Lebedev in the town of Chita was unlawful and unfounded. It is standard under Russian law for investigations to be held where the alleged crime was committed; exceptionally the place where the suspect is located, or where the majority of the witnesses are located, can be nominated as the place of investigation, but such a decision must be adequately justified. In this case, the alleged crimes were committed in Moscow. The Basmannyi District court in Moscow ruled that the prosecutor's office had failed to give adequate reasons for the exceptional decision to nominate Chita as the place of preliminary investigation, where the two men had been transferred into pre-trial detention, and that this violated Mikhail Khodorkovskii's

and Platon Lebedev's constitutional right to defence and impeded their access to justice. The Basmannyi District court therefore concluded the decision by the Office of the Prosecutor General to hold the investigation in Chita was unlawful and unfounded, and ordered the Deputy Prosecutor General to "eliminate this violation". This decision was upheld by the Moscow City Court on 16 April 2007 and entered into force; the decision was further appealed by the Prosecutor's office. However, to Amnesty International's knowledge, the prosecutor's office has not taken any steps to eliminate the violation, either by providing adequate reasons for the exceptional decision to nominate Chita, or by transferring the case to Moscow, and as at the time of writing, the investigation remains in Chita. In fact the defence team is convinced that there can be no adequate explanation for the decision, as the only connection Chita has to the case is that it is the place to which the two men were transferred in December 2006. It is unclear to Amnesty International why, if the men were transferred to a pre-trial detention facility in Chita, they could not have instead been transferred to a pre-trial detention facility in Moscow. The failure by the prosecutor's office to respect the decision of the Basmannyi District court and the Moscow City court constitutes a violation of Russian procedure, and undermines the rule of law.

The Office of the Prosecutor General stated in a letter to Amnesty International, dated 23 October 2007, that the legality and grounds for the choice of Chita had been confirmed by the decisions of the Ingodinskii District court in Chita, which had ruled to extend the pre-trial detention of the two men in the town of Chita. However, on further appeal by the Prosecutor, the Presidium of the Moscow City Court (a higher court) ruled in September 2007 that the courts in Chita, when considering the issue of pre-trial detention for the two men, did not directly examine and rule on the issue of location of the preliminary investigation, and that therefore the original Moscow courts' decisions remained valid. It therefore appears that the Chita courts' decisions do not affect the obligation of the authorities to respect the Basmannyi District court's ruling that the decision by the Office of the Prosecutor General to hold the investigation in Chita was unlawful and unfounded.

In its letter the Office of the Prosecutor General also stated that when investigation actions were underway in the new case, Mikhail Khodorkovskii and Platon Lebedev were transferred on the decision of the investigator from their respective prison colonies to the town of Chita, as there were no pre-trial detention centres where they were serving their sentences, which would have prevented their participation in investigation and other procedural actions. Transferring the men to pre-trial detention in the town of Chita, according to the Office of the Prosecutor General, sped up the procedure in the case, and therefore sped up access to justice for "participants". Moreover according to the Office of the Prosecutor General, a transfer from Chita to Moscow would take up a significant amount of time, dragging out the procedural deadlines, and could have led to a violation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms – the right to a hearing "within a

reasonable time". Finally the Office of the Prosecutor General states that the decision of the Basmani District court [ruling the decision to nominate Chita as the place of preliminary investigation unlawful] is now being appealed at the Supreme Court of the Russian Federation (the highest court for criminal proceedings which will give a final ruling on the issue), and that meanwhile the accused and their lawyers continue to study the case materials without any time restriction. However, since the receipt of this letter, the defendants have been given a deadline of 22 December 2007 by which to conclude their study of the charges against them.

According to Amnesty International's understanding of the law, the fact that the Prosecutor's office is further appealing the decision of the Basmani District court at the Supreme Court does not in any way affect the decision's legal status of having entered into force, and therefore the appeal does not alter the requirement of the prosecutor's office to respect the court decision. Additionally, the legal team are adamant that holding the two men in Chita is detrimental to the two men's right to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. They also state that when Platon Lebedev was transferred to Chita from his prison colony in Yamalo-Nenets autonomous district, he was transferred via Moscow, a journey which took between three to four days. Mikhail Khodorkovskii's transfer from Moscow to Krasnokamensk, in Chita Region, took six days. It is therefore questionable whether a transfer from Chita back to Moscow would indeed be a prohibitively lengthy process.

In addition, whether a hearing has been held "within a reasonable time" is assessed on the circumstances of the individual case, including the conduct of the accused. According to the legal team, both defendants have been willing for the investigation and trial to be delayed for any reasonable period of time it would take for the men to be transferred to Moscow. Therefore any reasonable delay in the proceedings caused by such a transfer would not amount to a violation of the rights of the accused to trial within a reasonable time under Article 6 of the European Convention on Human Rights. Finally, the defence have appealed the deadline of 22 December 2007 given to both men by which time they should conclude the study of the charges. Under Article 217 part 3 of the Criminal Procedure Code, the only legal grounds for imposition of such a deadline are that an accused is purposefully dragging out the time to study the charges. The legal team of both Mikhail Khodorkovskii and Platon Lebedev refute this allegation in relation to the two men and are appealing the court decision.

The legal team is concerned that the criminal hearing will also be held in Chita, despite the Criminal Procedure Code making clear that both the investigation and hearing should take place where the alleged crime took place, in the absence of exceptional circumstances. Such a development would also appear to violate Article 47 of the Russian Constitution, which states that "Nobody may be deprived of the right to have his (her) case heard in the court and by the judge within whose competence the case is placed by law."

The failure of the prosecution authorities to respect the Moscow court decisions may indicate an intention to hold any trial in Chita in order to minimize outside scrutiny and attention to the case. Amnesty International is concerned that such a decision would have no basis in law. Amnesty International therefore urges that the authorities transfer the current criminal investigation of the two men to Moscow, and hold any trial of the two men also in Moscow, in proceedings that meet international standards of fair trial.

Harassment of the legal team

An attempt was made this year to disbar one of the legal team, Karinna Moskalenko. Despite Mikhail Khodorkovskii stating that he was satisfied with her work, the Moscow department of the Federal Registration Service, on the basis of a complaint from the office of the Prosecutor General, filed a request to the Moscow Bar Association in April 2007 to disbar her, accusing her of negligence in carrying out her duties on this case. On 21 June the Moscow Bar Association refused to disbar her, finding no evidence to substantiate the complaint. While the attempt was unsuccessful, it illustrates the extent to which lawyers working on behalf of Mikhail Khodorkovskii are under pressure from the authorities.

In addition, Amnesty International is concerned by other reports that law enforcement officials have harassed Mikhail Khodorkovskii's legal team. For example, Amnesty International requested the Russian authorities to inform the organization as to the reason why law enforcement officers extensively searched four lawyers from his legal team at Moscow's Domodedovo airport from where they had planned to travel to Chita on 4 February 2007. The Office of the Prosecutor General in its letter replied that no investigators from the case had been involved in the detention of the lawyers at the airport, and did not further elaborate.

Amnesty International urges the authorities to ensure that the legal team be permitted to carry out their functions without obstruction, hindrance or any form of intimidation and harassment.

Background

Both men were transferred from Moscow to distant Siberian prison colonies following their original convictions, Mikhail Khodorkovskii and Platon Lebedev to Chita region and Yamalo-Nenets autonomous district respectively. By having to serve their sentences for their original convictions in such remote locations, the men have faced particular hardship, with their rights to regular family contact and qualified legal assistance in the preparation of their applications to the European Court being severely impeded. The 2006 European Prison Rules state that "[p]risoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation." Moreover, this transfer was in violation of Russian legislation, which provided at the time that prisoners must serve their punishment at the place where they were sentenced, except in the case of an absence of prison places, when they may serve the sentence in a neighbouring

region. Amnesty International understands that this legislation (Article 73 of the Correctional Code of the Russian Federation) has now been amended to allow for such transfers not to be limited to neighbouring regions. However, regardless of any changes to Russian legislation, Amnesty International considers that the men should be transferred to serve their sentences in or near their homes in Moscow, in accordance with international standards.

By 25 October 2007, Mikhail Khodorkovskii had served half of his eight-year sentence, having been in detention, including pre-trial detention, for four years. Under Russian law, he would therefore have qualified for parole. However, earlier in October 2007, the administration of the pre-trial detention centre in Chita gave Mikhail Khodorkovskii a formal reprimand, for allegedly not holding his hands behind his back, in accordance with prison regulations, when returning to his cell from exercise. Mikhail Khodorkovskii's lawyers view this disciplinary measure as a pretext to prevent consideration of any parole request by Mikhail Khodorkovskii, as it disqualifies him from parole. However, even should he be granted parole he would not be released, as he has been remanded in custody in relation to the new criminal investigation. Amnesty International had previously raised with the Russian authorities concerns about the arbitrary nature of disciplinary measures against Mikhail Khodorkovskii in the Krasnokamensk prison colony.

On 25 October 2007, the European Court of Human Rights found that Russia had violated Platon Lebedev's right to liberty and security (Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) on five counts during the pre-trial phase of the first criminal proceedings against him. The Court ruled that Platon Lebedev's detention from 31 March to 6 April 2004 had lacked a legal basis and was therefore unlawful. The court also held that holding a hearing on 3 July 2003 concerning his detention in the absence of his lawyers had adversely affected his ability to present his case, and was not justified by the interests of justice; holding a hearing on 8 June 2004 concerning his detention in his absence had deprived him of an effective review of the lawfulness of his continued detention; and that delays in appeal proceedings concerning two of the detention orders had also resulted in a violation.

The defendants' lawyers, many Russian human rights organizations and other analysts consider that the original prosecutions, and now the new criminal charges, have been politically motivated. Whether or not the charges are politically motivated, the right to a fair trial is a basic human right and Amnesty International calls on the Russian authorities to respect this right in all cases without discrimination.

For further details of Amnesty International's statements in relation to these cases, see:

Russian Federation: The case of Mikhail Khodorkovskii and other individuals associated with YUKOS (AI Index: EUR 46/012/2005)

Russian Federation: On the conviction of Mikhail Khodorkovskii and Platon Lebedev (AI Index: EUR 46/020/2005)

Europe and Central Asia; Summary of Amnesty International's Concerns in the Region, January – June 2006 (AI Index: EUR 01/017/2006)