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UNFAIR TRIAL CONCERNS CAST DOUBT ON THE INTEGRITY OF THE CONVICTION OF MIKHAIL KHODORKOVSKY AND PLATON LEBEDEV

The second trial of Mikhail Khodorkovsky and Platon Lebedev, which began on 31 March 2009, concluded today with their conviction on charges of theft and money laundering while running YUKOS between 1998 and 2003.

Amnesty International is concerned that this trial has been marred by numerous procedural violations, including repeated breaches of the equality of arms. These violations in themselves suffice to cast serious doubt on the integrity of Mikhail Khodorkovsky and Platon Lebedev's convictions. Moreover, the manner in which the prosecution and trial have been conducted, the timing of the charges, the reported harassment of lawyers and defence witnesses and the unnecessarily harsh conditions of detention, all point strongly to a long-established pattern of political motives and interference having obstructed the independent administration of justice in this case.

Against this backdrop, it is impossible to conclude that justice has been done.

Amnesty International is therefore calling for the Moscow City Court to demonstrate its commitment to the rule of law and the integrity and independence of the Russian judiciary by overturning today's verdict on appeal.

Procedural violations and breaches of the principle of equality of arms

Amnesty International has been able to observe and has received additional reports from independent monitors and the defence team of Mikhail Khodorkovsky and Platon Lebedev of numerous procedural violations that cumulatively cast doubt on the fairness of their second trial.

Amnesty International has also received reports that witnesses have been harassed, threatened, ill-treated and pressured into either withholding evidence or testifying against the accused. The court has declined to summons some of the key witnesses requested by the defence, refused to allow experts called by the defence to stand, excluded potentially exculpatory evidence from the trial record and refused to compel the disclosure of potentially exculpatory evidence in the possession of the prosecution and third parties.

Right to defence hindered in the preliminary stages of the investigation

Amnesty International is concerned that from the beginning of this second set of proceedings there have been a series of interventions which have hindered the defence. For example the decision by the Office of the Prosecutor General to conduct the preliminary investigation of the new charges in the town of Chita, eastern Siberia, hindered the two men's right to adequate time and facilities to prepare their defence to the charges at this stage. The preliminary

investigation must as a rule be conducted at the place where the crime was committed. There are only a small number of exceptions to this, none of which were applicable since the actions the defendants were accused of did not take place in Chita; neither of the accused was located in Chita (until brought there for the purposes of the investigation), and nor were any of the other persons to be questioned in the course of the investigation located in that city.

In February 2009 the authorities finally transferred both the case and the accused to Moscow in readiness for the pre-trial hearing. By then, Mikhail Khodorkovskii and Platon Lebedev had spent approximately two and a half years in pre-trial detention in Chita in conditions of confinement which were significantly more severe than the 'general regime' penal colony to which the two men were sentenced in 2005.

Harassment of Defence Lawyers

In April 2007, only two months after new charges were filed against Mikhail Khodorkovsky and Platon Lebedev, the Office of the Prosecutor General filed a request with the Moscow Bar Association to disbar Karinna Moskalenko, on the grounds of inadequately representing the interests of her client, Mikhail Khodorkovsky, despite his having made no representation to this effect. The application was rejected by the Moscow Bar Association.

Prior to that, in February 2007, Karinna Moskalenko and two other members of Mikhail Khodorkovsky's legal team had been detained without explanation at Moscow airport and searched, while on their way to the penal colony in Chita to meet with him. Lawyers representing Mikhail Khodorkovsky during and after his first trial proceedings reported being repeatedly subjected to unlawful searches both prior to and after meetings with their client.

Harassment of Witnesses

Vasilii Aleksanian, a former vice-President of YUKOS and head of its legal department, was reportedly held in unsanitary pre-trial detention conditions and denied access to essential medical care between April 2006 and February 2008, despite repeated injunctions from the European Court of Human Rights requiring Russia to transfer him to a specialised medical clinic where he could receive treatment for lymphatic cancer. He has alleged before the Russian Supreme Court that while he was in pre-trial detention he was approached by prosecutors offering to expedite his access to necessary medical care if he was prepared to testify against Mikhail Khodorkovsky and Platon Lebedev in the current case.

Stephen Wilson, the Head of International Tax at YUKOS between May 2002 and September 2006, was presented with a summons by prosecutors to appear for questioning in connection with a related criminal case as he left the courtroom after providing testimony favourable to the defendants.

Another former YUKOS executive, Vladimir Pereverzin reported having been pressured or offered inducements to testify against Mikhail Khodorkovsky and Platon Lebedev in the period between their first conviction in May 2005 and the filing of the second charges against them in February 2007. Vladimir Pereverzin, who is currently serving an 11-year sentence following his conviction in March 2007 on charges related to his activities whilst at YUKOS, testified in the current proceedings that prosecutors had offered him the possibility of probation if he was prepared to provide incriminating evidence against Mikhail Khodorkovsky and Platon Lebedev.

Exclusion of defence witnesses and potentially exculpatory evidence

Article 6(3)(d) of the European Convention on Human Rights states that "Everyone charged with a criminal offence has the [...] right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

In breach of the principle of the equality of arms, during the course of the trial the defence were repeatedly denied the right to examine and cross-examine witnesses and to present evidence or experts, whose testimony they believed was relevant to the charges laid against their clients.

From the very outset, the defence was disadvantaged by the failure to append the list of defence witnesses to the indictment as required by Russian law. This omission, which required the defence to petition the court in respect of each witness it wished to summon, was aggravated by the frequent refusal of the court to subpoena witnesses requested by the defence.

While the prosecution was allowed on a number of occasions to present evidence gathered during interviews conducted abroad, the defence was repeatedly refused permission to admit sworn declarations by witnesses abroad into the trial record and had their defence requests to use video conferencing to allow witnesses based abroad to appear before the court declined. In sessions observed by an Amnesty International delegate when such permission was denied, the presiding judge simply stated that he did not see the necessity to do that.

In a further violation of the principle of the equality of arms, the defence was denied applications to present witness statements from individuals accused or suspected in other criminal proceedings, while the court allowed the prosecution to introduce interrogation records into the proceedings and prosecution witnesses in a similar situation to testify in court.

The court regularly refused to admit as evidence documents relating to the charges in the possession of the defence, including official documents from YUKOS and YUKOS subsidiaries and the reports of the state-appointed bankruptcy administrator.

The refusal of the court to compel disclosure

The court repeatedly declined defence requests to compel the prosecution and third parties to disclose information in their possession relevant to the charges.

Defence requests to compel the disclosure of wiretap recordings, transcripts of which were presented by the prosecution in court, were refused, as were requests for the full disclosure of materials from parallel investigations, on whose selective presentation in court, the prosecution placed considerable reliance.

Of particular significance was the refusal of the court to subpoena records from Transneft, the state-owned company that has a monopoly on the movement of oil through Russia's pipeline network, that the defence maintains would have provided crucial evidence relating to transfer and sale of oil allegedly stolen.

Conditions and irregularities in respect of the detention of the Mikhail Khodorkovsky and Platon Lebedev

In addition to the irregularities undermining the fairness of the criminal proceedings themselves, Mikhail Khodorkovsky and Platon Lebedev have been detained in conditions and circumstances that violate both Russian law and international standards that Russia has signed up to.

Mikhail Khodorkovsky and Platon Lebedev have spent five and half of the last seven years in pre-trial detention facilities, for the most part in solitary confinement, with reduced access to family visits and exercise. On 7 April 2010, a new law entered into force restricting pre-trial detention for persons suspected of committing economic crimes. In an apparent breach of this law, the Khamovnichesky Court granted the prosecution's request to extend the pre-trial

detention of Mikhail Khodorkovsky and Platon Lebedev for three months on May 14 and again on August 16, without advancing any justification for the decision.

They have been in pre-trial detention facilities in relation to the current charges since December 2006. Following their conviction in May 2005, Mikhail Khodorkovsky and Platon Lebedev were transferred to distant Siberian penal colonies, in violation of Russian law at the time, and the 2006 European Prison Rules, which state that “[p]risoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.”

In the course of his imprisonment, Mikhail Khodorkovsky was punished eight times for alleged violations of internal regulations and received a penalty of solitary confinement on six occasions. Mikhail Khodorkovsky was successful in five out of six of his appeals against these penalties.

On 22 August 2008, the Ingodinski district court in Chita rejected Mikhail Khodorkovsky’s request for parole (Platon Lebedev has not applied for parole). Under Russian law, Mikhail Khodorkovsky became eligible for parole on serving half his sentence. The request was denied on the grounds that

- he had not expressed a desire for occupational training (believed to be related to his refusal to qualify as a sewing machine worker), whilst imprisoned at a penal colony in Chita;
- he had not received any positive praise by prison staff;
- he had yet to complete his punishment for a violation of prison regulations on 15 October 2007 (in which he allegedly refused to obey an order to hold his hands behind his back when returning from the pre-trial detention yard).

Possible political motivations behind the second trial.

Numerous procedural violations and widespread allegations of political motivations marred the first trial of Mikhail Khodorkovsky and Platon Lebedev. An application to the European Court of Human Rights alleging, inter alia, that the first trial of Mikhail Khodorkovsky and Platon Lebedev was politically motivated was declared admissible by the Court on 21 May 2010. Its final ruling is still pending. In a judgment of 25 October 2007, the European Court of Human Rights ruled that repeated irregularities in the pre-trial detention of Platon Lebedev in the run up to his first trial violated several of his Convention rights.

Amnesty International is not in a position to pronounce on the facts as presented during the course of this current trial by both the prosecution and the defence. Amnesty International notes, however, on the basis of its own trial observations and the reports of other independent monitors, the extreme difficulties that the prosecution faced in presenting a clear and coherent narrative linking established facts with the elements of the offences with which the defendants were charged and convicted.

The continuing disregard for due process and the consistent attempts to obstruct the preparation of the defence has only strengthened the impression that the current conviction of Mikhail Khodorkovsky and Platon Lebedev has been sought and, for now, achieved, for political ends and without consideration for the most elementary requirements of justice.

These allegations, which continue to cast a long shadow over the independence of the Russian judiciary and the effective separation of powers in the country, cannot be ignored in the assessment of second trial of Mikhail Khodorkovsky and Platon Lebedev. They need to be addressed by the Russian authorities and judiciary alike.

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