

To: Procuracy General of the Russian Federation

From: Lawyer K.A. Moskalenko,
Moscow City Bar Association
Law Office No 10

City of Moscow, Marksistsky pereulok d.
1/32

On the case of M.B. Khodorkovsky

During the last few months, the case of M.B. Khodorkovsky has passed into a new phase as his persecutions are becoming of a more and more expressed nature and are accompanied by unprecedented pressure brought upon his lawyers. The goal in view is to distract public attention, as much as possible, from this case and to hush up the facts in the case. At the same time, the prosecutive body publicly spreads information on his being guilty, while his defence lawyers are in every possible way restricted in the expression of their opinions being threatened with the application of criminal prosecution measures. Contrary to the law, investigatory actions regarding M.B. Khodorkovsky are held in one of the most remote regions of Russia where it is necessary to fly for many hours being subject to numerous pressures and all kinds of control under the pretence of the need to ensure aviation safety.

The last few days were marked by the overt encroachment on the lawyers' immunity and independence and by the attempts to intimidate the defence of M.B. Khodorkovsky and P.L. Lebedev aimed to deprive their defence clients of legal assistance. From the documents, handed over to the lawyers by the investigation, it becomes obvious that the lawyers will further on be subjected to all kinds of pressure and arbitrariness with their possible exclusion from participation in the case and criminal prosecution.

With a view to two different letters received on February 06, 2007 from S.K. Karimov, investigator for particularly important cases, as well as to the circumstances in which these letters were delivered to me, I state the following.

1. Substitution of the case number and fabrication of documents by the investigation

The defence of M.B. Khodorkovsky was invited for participation in the investigative actions on the criminal case No 18/41-03. This was the criminal case within which our client was accused on February 5, 2007. I know nothing about the institution of the criminal case No 18/432766-07 against M.B. Khodorkovsky, nor do I know anything about the contents of this case, or about the initiation of proceedings by the Procuracy General or by the Chita Oblast Procuracy on whose

letterhead the defence lawyers received communication from February 6, 2007 signed by investigator T.B. Rusanova.

2. Rendering of illegal pressure upon counsel

Besides demonstrating in his letters disrespect to the defence lawyers, S.K. Karimov uses an inappropriately accusatory tone. Thus, in his second letter from February 6, 2007, he writes as follows, “*Your refusal to sign the report is impeding the investigative actions and, under certain circumstances, can be regarded as containing elements essential to the offence as provided in art. 294 of the RF Criminal Code (Annex 1).*” This phrase has been perceived as direct threat.

By his position, the instigator is of equal legal standing and shall not be allowed, if he does not want to violate the Constitution, using an incriminating, accusing or offensive tone when speaking to the defence. It is obvious that when the investigator allows himself to make such statements regarding the defence, he makes an attempt to threaten the defence and wants to put it in the dependent and subordinate position in relation to the investigatory agency. This is in direct confrontation with the concept of fair legal proceedings established in the Russian laws, and disagrees with the international standards being neither more nor less than abuse of power for illegitimate purposes. At the same time, ignorance of law, lack of education or legal culture or any other similar factors do not relieve the investigator for his rendering illegal pressure upon the defence lawyers.

3. False statements by the investigation

Among other statements that are in contrary to the facts, the letter by investigator S.K. Karimov from February 06, 2007 (Annex No 2) contains a clearly false statement regarding the fact that M.B. Khodorkovsky’s lawyers ostensibly refused signing the investigative action reports. We signed all the investigative actions reports regardless of the fact whether we agreed or disagreed with their contents.

Besides, we would like to inform you that even if the defence had taken such position it would not have been illegal. As it follows from the norms of the law – art. 167 para 1, art. 190 para 9 of the RF Code of Criminal Procedure – the law provides for an opportunity for the defence lawyers, as well as for other persons participating in the investigative action to refuse signing the investigative action report. This is one of the unforbidden-by-the-law ways to defend the rights of the client that S.K. Karimov mentions in his letter.

4. Position of principle by the defence having refused to sign the “Nondisclosure Statement in Relation to the Preliminary Investigation”

Abusing his right and restricting the defence lawyers to disseminate information, investigator S.K. Karimov, acting via other persons, i.e. members of the investigatory group, tried to oblige us, defence lawyers of M.B. Khodorkovsky, to sign this actually fabricated document. As specified above, the defence was invited for participation in the investigative actions on the criminal case No 18/41-03, which was actually the criminal case within which our client was arraigned on February 5, 2007. We know nothing about the institution of the criminal case No 18/432766-07 against M.B. Khodorkovsky, and we have no information as to its contents. It is obvious that nobody, and even more so the defence lawyers, who are obliged to act in the best interests of their client, can be forced to signing a statement with obligation to not disclose the information that they do not know. Based on common logic, the defence lawyers simply cannot know whether they really know this information, and, respectively, what precisely they are not supposed to disclose. Such broad interpretation can result in the situation when the investigation will try to make lawyers to keep silence regarding ALL the issues, without any exception, including the facts of violated human rights, which contradicts the purposes of the given norm and the goal of justice as a whole. This means that restrictions of the rights introduced by the investigation go far beyond the restrictions aimed for the legitimate goal and such a requirement cannot be considered proportional or lawful.

Besides, if we analyze the position of the investigation, it is legally groundless and is deprived of any common sense on the following grounds.

4.1. Refusal to sign such a document can in no way “impede investigative actions”, for which fact the investigation blames the defence.

4.2. The obligation for the defence to sign this kind of document is not specified in any article of the RF Criminal Code referred to by investigator S.K. Karimov.

The law provides for such an obligation only in case the defence lawyer participates in the criminal proceeding with the materials containing information constituting a state secret.

“In case the defence lawyer participates in the criminal proceeding containing materials constituting a state secret, while having no respective right for access to the specified information, he/she shall be obliged to sign a nondisclosure statement” (article 49 para 5 of the RF Criminal Code).

4.3. In this case it is important to warn about inadmissibility of disclosure rather than to make a person sign a respective statement and it is necessary that the warning be based on the law. The defence never denied the fact of having been warned and informed the investigation in a written form of the reason for refusal to sign the statement. S.K. Karimov’s opinion that this reason is strained cannot serve as a decisive factor as it is just an opinion of one of the parties to the proceeding. As it has already been mentioned above, the refusal was due to the attempt by the investigation to make the defence lawyers sign a fabricated document, i.e. a statement bearing the number unknown to the defence regarding the criminal case.

Lawyer Yu. M. Shmidt made the following record on the Nondisclosure Statement, “I do not know anything whatsoever regarding the materials of the case bearing the number specified above.” Defence lawyer Moskalenko expressed

similar position on behalf of the defence writing, for example, on the letter of notification from 05.02, 2007 sent by the investigation: “I consider it necessary to state that all the defence lawyers of M. Khodorkovsky were asked to sign a “Nondisclosure Statement in Relation to the Preliminary Investigation” on some unknown to us criminal case (so far we know nothing of the case with such a number)”.

Thus, all the actions undertaken by the investigation, as well as the letters by S.K. Karimov are legally groundless and are obviously aimed for the only purpose of intimidating and blackmailing the defence of M.B. Khodorkovsky.

5. Actions of intimidation by the RF Procuracy General against lawyers

Some of the actions undertaken by the RF Procuracy General aimed to intimidate the lawyers are taking place practically daily starting with February 04, 2007.

5.1. Events of February 4, 2007.

Thus, on February 4, 2007, lawyers of M.B. Khodorkovsky and P.L. Lebedev – Yu. Shmidt, Ye. Baru, K. Rivkin, L. Saykin and later K. Moskalenko arrived at the airport of Domodedovo in order to fly to the City of Chita. At the airport, they underwent an unprecedented provocation that can be rightly characterized as a planned action of intimidation.

Lawyers Yu. Shmidt, Ye. Baru, K. Rivkin and L. Saykin were detained at the registration desk having their tickets and passports taken away, while they themselves were taken to the basement, i.e. to the airport militia station, where they were kept for some time by the armed employees of the law enforcement bodies.

Some time later, a woman-colonel of the Ministry of Interior in plain clothes came and produced her ID of senior investigator of the Ministry of Interior responsible for militia activities related to transport. She explained that in order to save their time the lawyers should have their belongings examined for their own safety; besides, they should present their papers to prove that the latter contained no documents of classification level.

In the meantime, lawyer K.A.Moskalenkoto arrived at the airport.

Knowing that my colleagues had already been detained and would not be set free by militia in spite of the fact that registration time was coming to an end, I came up to the registration desk in order to find out the grounds for the detention of my colleagues and the place where they were kept. The employees made several attempts to take me to the militia station as well. Seeing my flat refusal, the militiamen promised ‘to carry’ me to their local branch office. Several militiamen and some other people in plain clothes were constantly blocking my movements and demanding that I go with them to the militia station. Detailed description of the circumstances of this actual detention is provided the annexed letter addressed to Ella Aleksandrovna Panfilova (Annex No 3).

Half an hour before the flight, all the lawyers were suddenly invited to go through security check.

Not less than ten militiamen and several persons in plain clothes accompanied five lawyers. They assured us that all the problems had been cleared and that the lawyers had to quickly go to the gate not to delay their flight. However, it was evident that some new provocation was under way. The lawyers went to the examination place accompanied by militia officers. Having taken off their coats and footwear, they passed through the metal detector while their belongings went through the x-ray detector. Nevertheless, after this careful and full check, militia officers began a most detailed examination of all the personal belongings of the five lawyers. The officers holding the check responded to the lawyers' protests that were acting exclusively under the law aiming to protect passengers' interests, "*when the terrorists attempt to blow up your plane...*," said one of captains actively rummaging the lawyers' belongings.

Militia officers filmed all these actions.

As a whole, the militia officers examined everything that they had failed to examine in the militia station but with even greater cynicism. During the examination, they **very attentively checked all the papers from the lawyers' files; all the lawyers' documents and letters were scanned and filmed.**

When the lawyers expressed their indignation and protest, the militia major filmed their faces. When the lawyers required stopping the video shooting of their faces, the officers laughed and said that they were doing it for the sake of their own safety as preventive measures. Wearing no gloves, the militia officers touched all the lawyers' belongings including linen, foodstuffs and personal hygiene items.

I would like to note that during this examination I was communicating with E.A. Panfilova who had been urgently called by the representatives of the legal rights organization. She asked to tell the militia officers that they should not do these wrongful acts and that she was going to inform about this incident the Minister of Interior the next day. This made the militia officers laugh, and they used it as a reason for talking to the lawyers even more mockingly.

Meanwhile, having examined all the lawyers' belongings, their documents and papers, the militiamen accompanied the lawyers to the minibus so that they could be taken to the plane, which was almost an hour late.

This situation became an issue to be addressed by the International Nongovernmental Organization of "Centre for Assistance to the International Protection" to Ella Panfilova (Annex 3). Besides, the International Commission of Jurists, lawyer K. Moskalenko being its commissioner, published a press release with an appeal to Russia's authorities to cease persecutions against M. Khodorkovsky's lawyers (Annexes 4, 5).

5.2. Events of February 6, 2007.

During their stay at the investigative isolator [SIZO] of the City of Chita, after the end of the working day, at 18:15, all the defence lawyers of M.B. Khodorkovsky and P.L. Lebedev (6 persons) having undergone all the examinations and passed through all the check points were heading for the exit from the investigative isolator. However, they found the exit door blocked by the security officer. The defence lawyers were not allowed to leave the investigative isolator. They were actually detained and without any explanation of the reasons

were escorted to the 2nd floor of the SIZO office building, to the office of the chief of the detention facility. Having no opportunity to disobey the requirements, being in the guarded area, the defence lawyers had to go the chief's office.

It should be noted that the chief of the detention facility, in fact, had no questions to the defence lawyers, the actual masters of the situation in his office were the employees of the RF Procuracy General on whose demand this actual detention had been organized. The purpose of this detention was to inform the defence lawyers about the new schedule for the holding of investigative actions starting with February 08, 2007, despite of the lawyers' earlier submitted numerous requests to ensure observance of their rights regarding the fact that the investigation should make such announcements in advance. It was here, in the detention facility chief's office that we were required to sign the documents that required reading, discussing and legally substantiating the inadmissibility of such a way of holding the investigation. As long as the text of the notification signed by S.K. Karimov had been written in the inadmissible, incorrect and menacing manner (we consider it necessary to remind you that investigator has an equal standing with other parties to the proceeding and such a tone should be disallowed) the defence lawyers considered it unacceptable to sign these categorical documents.

Besides, the working hours had ended and, therefore, the defence lawyers decided to continue working over the case and preparing objections regarding this document the next working day. However, the investigators started drawing up a statement in relation to our refusal to sign the documents. After this the defence lawyers, at last, were allowed to leave the office building of the investigative isolator.

5.3. Events of February 7, 2007.

Another action in the chain of actions of intimidation was undertaken on February 7, 2007 about 8 o'clock a.m. at the Chita airport. According to the application by my client M.B. Khodorkovsky regarding the need for lawyer K.A. Moskalenko to continue working on his case in the European Court and due to no need for her participation in the investigative actions and in the familiarization with the case materials (Annexes 6 and 7 – copies of the respective applications with a note of receipt made by the investigator), I went to the airport intending to leave Chita having warned investigator T.B. Rusanova about this in advance.

After the registration, all kinds of checks and examinations, all the passengers who were in the departure hall expecting their flight all of a sudden heard a question: "Who is Moskalenko here?" Then, in the presence of all the passengers who were in the waiting room, I was approached by the airport security service officer who in a categorical form demanded that I follow him. I was standing there together with the representatives of the western broadcasting companies who know me. When I asked where and why I should go with him, the airport officer started giving me different explanations. At first, he demanded that I go through additional examination. On finding out, that except for a small ladies' bag I had nothing to have examined and that I had passed through all kinds of personal inspection in the presence of the afore mentioned witnesses, the airport

officer said that it was necessary to correct some mistakes in the boarding pass registration. When I showed him the irreproachable boarding pass he said, “Well, it’s your business, but I advise you doing it not to have things worse. If you do not go to meet with the representatives of the law enforcement bodies, you will not be allowed to board the plane.”

After this threat, the officer left and came back after a while with a big group of people. Several militia officers (4-5 persons) blocked the exit from the waiting room, while investigator I.A. Yurzditskiy and some other person in the plain clothes whose name I do not know as he had failed to introduce himself demanded that I sign the statement of familiarization with two documents:

1. The letter of notification by investigator S.K. Karimov from February 6, 2007 (Annex 1);
2. Statement of nondisclosure of information, the copy of which I do not have as, despite of my requirements, they never gave it to me.

Taking into consideration the fact that I was under real threat of not being allowed to board the plane in the situation of actual detention and danger to remain alone without any witnesses, I had to make a decision and sign the papers given to me.

However, I made the following records on these documents: *“I consider illegal this forcing me sign the statements in my off-duty hours, at 8:30 at the airport under the threat to disallow me to board the plane. On the merits of my objections, I am stating the following. I have never read the materials of the criminal case No 1832766-07 specified in the given document. I had been invited to the City of Chita in relation to another criminal case. Detailed objections shall be immediately sent to the address of the RF Procuracy General.”*

On the letter of notification, I made the following record: *“I was given the letter at the airport of the City of Chita after the attempt to make me go through an additional examination. I am compelled to make the given statement as the employee of the airport, in presence of witnesses – representatives of TV – threatened me with disallowing me to board the plane. February 7, 2007; 8:30 (Chita time).”*

6. Norms of legal ethics as interpreted by S.K. Karimov, head of investigative group

References made by S.K. Karimov regarding our non-fulfilment of our lawyer professional duties and violation of ethical standards are inappropriate. The investigator does not specify the way the defence lawyers allegedly acted against the legitimate interests of their client. However, these ‘legitimate interests’ can hardly be interpreted as actions aimed at conniving the lawlessness taking place within the given case. The cynicism of the situation consists in the fact that the investigators who are regularly violating the rights of M.B. Khodorkovsky decided to protect him from his defence lawyers.

7. The violations committed by the investigation demanding immediate response

7.1. The transfer of investigative actions regarding M.B. Khodorkovsky's case to Chita is a violation of provisions of the law on criminal procedure.

Holding of investigative actions on the cases of M. Khodorkovsky and P. Lebedev in the City of Chita whereas the investigation of this case is held in the City of Moscow, which follows directly from the documents, is illegal.

We protest against this kind of arbitrariness resulting in the standing for the defence unequal with that of investigator S.K. Karimov and the investigative group that he is heading.

7.2. Extremely long distance to the place where the investigative actions in relation to M.B. Khodorkovsky are held is seriously limiting his right for defence.

This makes it impossible for the defence lawyers to communicate freely with their client, to keep the lawyer file secret and not to be exposed to humiliating examinations, searches and review of the defence lawyers' documents with the use of video camera under the alleged need to ensure aviation safety.

7.3. The actions of intimidation undertaken lately in relation to the defence lawyers ALMOST DAILY should be stopped and subjected to the proper legal assessment including identification of the respective officials responsible for them. Should there be no reaction to these facts by the heads of the RF Procuracy General, the defence lawyers will have to resort to the judicial protection as the highest form of protection of human rights – they will file a complaint to the independent judicial authority – Basmany District Court of the City of Moscow. In case of failure to reach a positive result, the defence shall continue its appeal of these actions including in the European Court of Human Rights.

On the basis of the above-stated facts and joining all the requirements set by the defence lawyers of M.B. Khodorkovsky, I insist on the following:

1. I require that all the investigative actions in relation to M.B. Khodorkovsky be held at the place where the investigation is made, i.e. in the City of Moscow;
2. I require identifying and holding liable all the officials guilty of violation of the confidentiality of lawyers' files and of committing illegal actions in relation to lawyers.

The copy of the present application shall be submitted to:

1. E.A. Panfilova – Chair of the Council for Civil Society Development and Human Rights under the RF President ;
2. V.P. Lukin - Representative of the Russian Federation on Human Rights;
3. Committee on Legal Issues and Human Rights of the Parliamentary Assembly of the Council of Europe;
4. International Commission of Jurists;
5. Amnesty International;

6. The Special Rapporteur on the Independence of Lawyers and Judges of the United Nations Organization;
7. Moscow Helsinki Group and Center for Assistance to International Protection – for further publication at the discretion of the organizations.

Annexes:

1. Letter by investigator S.K. Karimov from February 6, 2007, handed over on February 7, 2007 at the airport of the City of Chita;
2. Letter by investigator S.K. Karimov from February 6, 2007, handed over on February 6, 2007 in the office of the chief of the investigative isolator;
3. Appeal by the International Nongovernmental Organization of “Center for Assistance to International Protection” to E. Panfilova;
4. Press release of the International Commission of Jurists in the language of the original;
5. Press release of the International Commission of Jurists translated into Russian;
6. M.B. Khodorkovsky's application from February 6, 2007;
7. Application by lawyer K.A. Moskalenko from February 6, 2007.

Lawyer

K.A. Moskalenko

February 8, 2007