EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 24 March 2014

FIRST SECTION

Applications nos. 51111/07 and 42757/07
Mikhail Borisovich KHODORKOVSKIY against Russia
and Platon Leonidovich LEBEDEV against Russia
lodged on 16 March and 27 September 2007 respectively

STATEMENT OF FACTS

1. Mr Khodorkovskiy (the first applicant) was born in 1963. He was released from prison in December 2013. Mr Lebedev (the second applicant) was born in 1956 and was released from prison in January 2014.

A. The applicants' background

2. Before their first arrest in 2003 the applicants were very rich and politically influential businessmen. The first applicant was the former CEO of and a major shareholder in Yukos plc, which at the relevant time was one of the largest oil companies in Russia. The second applicant was the first applicant's business partner and a close friend. From 1998 the second applicant worked as one of the directors of Yukos-Moskva Ltd. He was also a major shareholder in Yukos plc. In addition, the applicants controlled a large number of other mining enterprises, refineries, banks, financial companies, etc. In 2002-2003 Yukos began to pursue a number of ambitious business projects, which would have made it one of the strongest players on the market and independent of the State. In particular, Yukos was engaged in merger talks with the US-based Exxon Mobil and Chevron Texaco companies.

3. The applicants were also active as political lobbyists. From at least 2002 the first applicant openly funded opposition political parties, and a number of his close friends and business partners became politicians.

4. The first applicant asserted that his political and business activities had been perceived by the leadership of the country as a breach of loyalty and a threat to national economic security. As a counter-measure he alleges that the authorities launched a massive attack on the applicant, his company, colleagues and friends. A more detailed description of the applicants' political and business activities prior to their arrest can be found in

Khodorkovskiy and Lebedev v. Russia, nos. 11082/06 and 13772/05, 25 July 2013, §§ 8-41; the latter will hereinafter be referred to as the *Khodorkovskiy and Lebedev (no. 1)* case.

5. In order to demonstrate that their criminal prosecution was ordered at the upper echelons of the political system, the applicants referred to circumstantial evidence which showed that Yukos's business projects ran counter to the official petroleum policy, and that the applicants' involvement in politics raised discontent within the Government. The applicants also referred to the testimony of a number of witnesses, in particular Mr Kasyanov, who was Prime Minister in 2003, as well as several other officials who confirmed or implied that the applicants' arrest and conviction had been "exemplary punishments", intended to remove the applicants from the political scene, nationalise their companies and prevent other "oligarchs" from participating in political life (see *Khodorkovskiy and Lebedev (no. 1)*, §§ 370, 371 et seq.).

B. The applicants' first trial

6. On 20 June 2003 the General Prosecutor's Office (the GPO[1]) initiated a criminal investigation into the privatisation of a large mining company, Apatit plc (criminal case no. 18/41-03). In 1994 20% of Apatit shares were acquired by a company allegedly controlled by the applicants. The case was opened with reference to Article 165 of the Criminal Code ("misappropriation of assets" falling short of embezzlement), Article 285 ("abuse of official powers") and Article 315 ("deliberate non-compliance with a court order") of the Criminal Code.

7. The GPO investigative team was led by Mr Karimov. According to the applicants, he was the same person who had participated as lead investigator in the cases of *Gusinskiy v. Russia* (no. 70276/01, ECHR 2004-IV) and *Garabayev v. Russia* (no. 38411/02, 7 June 2007), and who later took part in in the criminal prosecution of Mr Aleksanyan (see *Aleksanyan v. Russia*, no. 46468/06, 22 December 2008).

8. In the following years the charges against the applicants within case no. 18/41-03 (hereinafter – the "main case") were repeatedly supplemented and amended. Thus, within that case the applicants were also charged with corporate tax evasion (Article 199 of the CC). The applicants were suspected of selling Yukos oil through a network of "trading companies" registered in low-tax zones, in particular in the town of Lesnoy, Sverdlovsk region. According to the GPO, tax cuts were obtained by those companies by deceit, since they existed only on paper and never conducted any real business in the low-tax zones that would have resulted in eligibility for a preferential tax regime. The GPO suspected that the applicants registered and controlled those companies through their friends and partners, in particular Mr Moiseyev, Mr Pereverzin and Mr Malakhovskiy.

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[1] The GPO was the investigative body in the first and the second cases involving the applicants and supported the accusations at the trial; at some point investigative functions in Russia were transferred to a special body – the Investigative Committee. However, for the sake of simplicity the prosecuting authorities will be referred to throughout the text as "the GPO".

9. Case no. 18/41-03 led to the applicants' conviction in their first trial in 2005. The facts related to that trial (the "first trial") were at the heart of several applications lodged with the Court in 2003-2006 (*Lebedev v. Russia*, no. 4493/04, 25 October 2007; *Khodorkovskiy v. Russia*, no. 5829/04, 31 May 2011; *Khodorkovskiy and Lebedev (no. 1)* case).

10. In the course of the first trial the applicants repeatedly stated that the GPO was conducting parallel investigations in their respect but that they had not been given access to any information or materials related to those investigations.

11. In October 2005, after the end of the first trial, both applicants were transferred from Moscow to two remote Russian penal colonies. The first applicant was sent to penal colony FGU IK-10, located in the town of Krasnokamensk, Chita Region. The second applicant was sent to serve his sentence in correctional colony FGU IK-3 in the Kharp township, located on the Yamal peninsula (Yamalo-Nenetskiy region, Northern Urals, north of the Arctic Circle).

12. The applicants' prison terms as defined in the 2005 judgment subsequently expired; however, they both remained in prison on account of new accusations brought against them within the related but separate court proceedings which are at the heart of the present case (the "second trial").

C. Trials of the applicants' former colleagues and partners

1. Trial of Mr Pereversin, Mr Malakhovskiy and Mr Valdes-Garcia

13. On an unspecified date the GPO severed from the applicants' case a new case concerning Mr Pereversin, Mr Malakhovskiy and Mr Valdes-Garcia. The charges against Mr Pereversin included, in particular, embezzlement and money laundering ("*legalizatsiya*") committed in a group which also comprised the applicants.

14. In June 2006 the trial of Mr Pereversin, Mr Malakhovskiy and Mr Valdes-Garcia started at the Basmanniy District Court of Moscow. That trial was held in camera. Judge Yarlykova presided over the trial.

15. On 1 March 2007 Mr Pereversin and Mr Malakhovskiy were found guilty; Mr Valdes-Garcia fled from Russia and escaped conviction. He alleged that in 2005 he had been ill-treated while in custody. In particular, Mr Valdes-Garcia claimed that he had been beaten by investigator Mr Kz. and received multiple injuries. However, the Russian authorities refused to institute criminal proceedings into those allegations[1].

2. Trial of Mr Aleksanyan

16. Mr Aleksanyan was one of the lawyers for the first and second applicants. In 2006 he was arrested and prosecuted in a related but separate case; the accusations against Mr Aleksanyan were brought to trial but in 2010 they were dropped due to the expiry of the statute of limitations.

17. According to Mr Aleksanyan, on 28 December 2006 Mr Karimov, the lead investigator in the applicants' case, met him in the GPO's premises

[1] What were the reasons for refusing to institute criminal proceedings in relation to the injuries received by Mr Valdes-Garcia while in custody?

and offered a deal. He proposed that Mr Aleksanyan give evidence against the applicants; in exchange, he would be released and have the opportunity to receive appropriate medical treatment, which would not be available to him in prison. Mr Aleksanyan was dying from AIDS, but he refused this offer.

D. Opening of case no. 18/325556-04

18. In 2004, while the applicants' first trial was underway, the GPO decided that certain episodes related to the applicants' business operations were to be severed from the main case (no. 18/41-03).

19. On 2 December 2004 the GPO opened case no. 18/325556-04, which concerned "money laundering" by Mr Moiseyev and other "unidentified persons".

20. On 27 December 2004 the GPO informed the applicants of that decision. However, the applicants were not questioned in relation to those new charges and were not given any details or informed about the nature of the investigation.

21. On 14 January 2005 the first applicant's defence complained before the Meshchanskiy District Court (which conducted the first trial) that the GPO was conducting a parallel investigation but refusing to give the defence any information about its goals or any charges which might result from it.

22. On 2 March 2005 the first applicant complained that the very same witnesses who appeared at the first trial at the GPO's request had been summoned to the GPO's office in Moscow and questioned there again, allegedly in connection with the new investigation. The defence claimed that, in so doing, the GPO tried to put pressure on those witnesses and influence their oral testimony at the first trial.

23. On 16 May 2005 the first trial ended with the applicants' conviction.

24. On 5 July 2005 the GPO informed the applicants' lawyers that the applicants were to be charged under Articles 160 ("Embezzlement") and 174 ("legalisation or money laundering") of the Criminal Code. The applicants' lawyers attended the GPO office but they were told that the applicants were not going to be charged. No explanation was given for that decision[1].

E. The applicants' second trial

1. Opening of case no. 18/432766-07

(a) The applicants' transfer to Chita and their attempts to change the venue of the investigation

25. On 14 December 2006 both applicants were transferred to a pre-trial detention facility (SIZO) of the Chita town (FGU IZ-75/1), where they were detained until their transferral to Moscow in 2009. According to the

[1] It is unclear what happened to case no. 18/325556-04, whether it still exists or became case no. 18/432766-07, and to what extent the factual scope of the investigation in those two cases was different, identical, or partially overlapping.

applicants, the second applicant was transported from Kharp to Chita via Moscow. The trip took four days and was about 10,000 km in length.

26. On 3 February 2007 investigator Mr Karimov from the GPO decided to sever several episodes from criminal case no. 18/41-03 and open a new case. The new case was assigned case number 18/432766-07. The Deputy General Prosecutor Mr Grin ordered that the investigation in that case was to be conducted in the Chita region.

27. On 5 February 2007 the applicants were charged in case no. 18/41-03 with the crimes set out in two provisions of the Criminal Code: Article 160 ("embezzlement") and Article 174 (1) ("Money laundering"). According to the bill of indictment, those crimes had been committed by the applicants in Moscow in their capacity as former senior managers of Yukos plc and affiliated companies.

28. On 7 February 2007 a group of lawyers for the applicants travelled from Moscow to Chita. At Domodedovo airport (Moscow) the applicants' lawyers were stopped and detained for one hour by the police working at the airport security. Their papers were verified and their belongings were additionally checked using special equipment and X-ray apparatus. In the course of the searches confidential papers which were being carried by the lawyers were examined and video-recorded.

29. On the same day, in the pre-flight security zone of Chita airport, the GPO investigators approached Ms Moskalenko, one of the lawyers for the first applicant, and ordered her to sign a formal undertaking not to disclose information from the case materials in file no. 18/43266-07. She made a handwritten note on the form, stating that she had been coerced into signing the form and that she had not been given access to the documents in case file no. 18/43266-07. On 8 and 15 February 2007 Ms Moskalenko filed a formal complaint with the GPO, stating that the two episodes in the airports amount to harassment of the applicants' lawyers and breach of their professional privilege.

30. In February 2007 the applicants lodged a complaint under Article 125 of the CCrP about the decision to investigate the new cases in Chita. They claimed that since the acts imputed to them had been committed in Moscow, they ought to be investigated in Moscow, and that the applicants should be transferred to a remand prison there.

31. On 6 March 2007 the GPO initiated disbarment proceedings in respect of Ms Moskalenko, referring to her absence from Chita when the first applicant was familiarising himself with the materials of the case. The first applicant had to issue a statement confirming that he was fully satisfied with Ms Moskalenko's work. On 8 June 2007 the Qualifications Commission of the Bar refused to disbar Ms Moskalenko.

32. On 20 March 2007 the Basmanniy District Court found that the GPO's decision to conduct the investigation in Chita had been arbitrary and that the investigation should be conducted in Moscow. That ruling was upheld on 16 April 2007 by the Moscow City Court. However, the applicants remained in the Chita remand prison[1].

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[1] What was the reason for the decision of 20 March 2007 by the Basmanniy District Court? Why were the applicants not transferred to Moscow immediately after that ruling?

33. In July 2007 the defence filed an application with the Prosecutor General, asking that a criminal case be opened in respect of the GPO officials who had failed to follow the order in the Basmanniy District Court's decision of 20 March 2007 concerning the proper place of the investigation. However, this was refused.

34. On 25 December 2007 the Supreme Court of Russia, at the GPO's request, examined the case by way of supervisory review and ordered the lower court to reconsider whether Moscow was the proper place for the investigation in the applicants' case.

35. On 30 January 2008 the Basmanniy District Court held that the GPO's decision to designate Chita as the place of investigation did not breach the applicants' constitutional rights and did not hinder their access to justice. Consequently, the court confirmed the validity of that decision. On 7 April 2008 the Moscow City Court upheld the lower court's ruling.

(b) The applicants' attempts to have the proceedings discontinued

36. On 28 March 2007 the first applicant lodged a motion under Article 125 of the CCrP before a judge. He complained about actions by the GPO investigators, namely that he had not been given any details about parallel investigations; that conducting the investigation in Chita was unlawful, since all of the operations incriminated to the applicants had taken place in Moscow; that the courts which authorised his detention in the Chita remand prison lacked jurisdiction, and that the GPO had harassed his lawyers by subjecting them to unlawful searches, threatening them with criminal prosecution and trying to disbar Ms Moskalenko, one of his lawyers. The applicant claimed that all of that, taken in aggregate, amounted to an abuse of process. He sought a court order directing the GPO to stay the proceedings. The applicant insisted on his personal attendance at the examination of that motion by the court, but the court decided that it was impossible to transport him from Chita to Moscow.

37. On 27 June 2007 Judge Yarlykova examined the motion. The applicant's lawyer challenged the judge on the ground that she had earlier presided in the trial of Mr Pereversin, Mr Malakhovskiy and Mr Valdes-Garcia, and could have therefore preconceived ideas about the first applicant's guilt. However, Judge Yarlykova refused the recusal application, and dismissed the motion on the merits.

38. On 19 September 2007 the Moscow City Court upheld the ruling by Judge Yarlykova. In particular, the Moscow City Court agreed with Judge Yarlykova from the District Court that under Russian law the judge was not competent to supervise procedural decisions taken by the prosecution bodies in the performance of their functions, and that the judge's only role in this respect was to monitor observance of the constitutional rights of the participants in criminal proceedings.

39. On 16 April 2008 the first applicant renewed his motion of 28 March 2007 seeking discontinuation of the criminal proceedings against him and Mr Lebedev. He also referred to various breaches of the domestic procedure, to bad faith on the part of the authorities and to infringements of the rights of the defendants and professional privilege of the applicants' lawyers. The applicant introduced this complaint before the Basmanniy

District Court in Moscow, but the judge transmitted the motion to a court in Chita, referring to the fact that the investigation was taking place there.

40. On 29 September 2008 Judge Ivanoshchuk of the Ingondinskiy District Court of Chita rejected the motion, on the ground that the investigator's actions were not subject to judicial review. On 26 December 2008 that decision was confirmed by the Chita Regional Court.

41. On an unspecified date in 2008 the second applicant introduced another complaint under Article 125 in which he indicated, *inter alia*, that he had not been given any information about the essence of the new case opened in 2004. On 29 December 2008 the Ingondinskiy District Court found that the GPO had failed to inform the second applicant about the opening of case no. 18/325556-04, had not served him with a copy of the investigator's decision, had failed to notify him about his rights, question him and inform him of the composition of the investigative team and extensions to the investigation. The District Court, however, found that it could not quash the order opening case no. 18/325556-04 and exonerate the applicants. On 30 April 2009 that decision was confirmed on appeal.

(c) The applicants' preparation for the trial

42. According to the applicants, the bill of indictment and the appended written materials ran to 188 volumes[1].

43. When the materials of the case file were given to the defence for examination[2], the applicants and their lawyer had access to only one copy of those materials, which they were allowed to study only in the presence of an investigator. When they wished to discuss materials or legal issues in private, the investigator removed the case file.

44. According to the applicants, it was not possible to keep copies of the case file in their cells.

45. Having received the bill of indictment with the case file, the defence asked the prosecution to clarify the charges. In their view, the prosecution had failed to demonstrate which facts it intended to prove with which evidence. They also submitted that the amounts of oil allegedly misappropriated by the applicants were defined in a random manner, and that the bill of indictment was badly written. However, that motion was rejected and the prosecution decided that the bill of indictment was acceptable as it was and ready to be submitted to the court.

2. Second trial

(a) Preliminary hearing

46. On 14 February 2009 case no. 18/432766-07 was referred by the GPO to the Khamovnicheskiy District Court of Moscow for trial. In the Khamovnicheskiy District Court the case was assigned no. 1/23-10.

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[1] How many pages did the case file contain?

[2] The parties are invited to indicate when the case file was provided to the defence for examination, when the process of examining the case file was completed and whether the defense sought additional time to study the case file.

47. On 3 March 2009 the trial began with a preliminary hearing, held in camera. The case was heard by a single judge, Mr Danilkin. The judge was assisted by four secretaries[1].

48. The prosecution team was composed of five prosecutors. The defence team was composed of over a dozen lawyers.

(i) Conditions in the courtroom

49. From 17 March 2009 the hearings were public. The two applicants were held in a glass dock, pejoratively referred to as the "aquarium". The dock was not air-conditioned, unlike the rest of the room, and was poorly ventilated. The applicants were brought to the courtroom each day in handcuffs and were heavily guarded.

50. The applicants sought the court's permission to sit outside the "aquarium" near their lawyers, but permission was not granted. In the applicants' words, while in the "aquarium" the applicants were unable to discuss the case with their lawyers confidentially and to review documents. All their conversations during the hearings were within earshot of the guards. The only possibility to discuss the case with their lawyers was in the remand prison, but even there the meeting room had a CCTV camera.

(ii) Motions by the defence at the preliminary hearing

51. At the preliminary hearing the defence filed several motions, all of which were rejected. Thus, the defence sought the discontinuation of the proceedings for abuse of process. However, Judge Danilkin ruled that it was premature to terminate the case without assessing the entire body of evidence and hearing the parties' positions on this matter. The applicants appealed but to no avail: on 1 June 2009 the Moscow City Court ruled that Judge Danilkin's ruling was not amenable to appeal by the defence.

52. The defence further complained that the prosecution had failed to submit to the court a list of defence witnesses to be called to the court by a subpoena. The defence contended that they were unable to secure the presence of those witnesses at the trial. The defence referred to Article 220 (4) of the CCrP in this respect. Judge Danilkin replied that the absence of a list of defence witnesses to be summoned did not invalidate the bill of indictment, and that the defence would be free to request summoning of the witnesses during the trial, if needed.

53. The defence asked the judge to order discovery of evidence and supress certain items of evidence contained in the prosecution case file, but all motions to that end were refused.

54. The defence challenged the territorial jurisdiction of the Khamovnicheskiy District Court over the case, but this objection was dismissed by the judge[2].

55. The defence repeated their request to have the bill of indictment reformulated in order to connect the evidence and factual assertions on

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[1] Did the secretaries keep notes (hand-written or typed) of the course of the trial or was the trial audio-recorded by the court and then transcribed? Is there an obligation under Russian law to make a verbatim record of the course of the trial, or is the court only required to produce a "summary record" (i.e. a record which does not reflect exactly every word said in court)?

[2] The Government are invited to produce the court's ruling on that point.

which the prosecution case relied and to clarify legal arguments by the prosecution. Judge Danilkin refused that motion, stating that the law did not require the prosecution to do a better job and re-write the bill.

(iii) Detention of the two applicants during the second trial

56. At the preliminary hearing the prosecution requested and extension of the applicants' "detention on remand" and on 17 March 2009 that request was granted by the court. The court, in breach of the law, did not set a time-limit for the extension in its order. The applicants argued that in the subsequent months detention orders were extended with delays; as a result, some periods were not covered by any valid detention order. In addition, in the applicants' opinion, the review of the detention order of 17 March 2009 was unnecessarily delayed.

57. Over the following months the applicants' "detention on remand" has been repeatedly extended. In the opinion of the defence, those extensions were contrary to the law. The first applicant went on hunger strike protesting against the extensions. In 2011 the Supreme Court acknowledged that the applicants' detention had been unlawful and even issued a special ruling in this respect, addressed to the Chair of the Moscow City Court.

(b) The case for the prosecution

58. The preliminary hearing was concluded on 17 March 2009 and the court passed to the presentation of the case by the prosecution.

59. The prosecution presented their case between 21 April 2009 and 29 March 2010. According to the prosecution, between 1998 and 2003 the applicants, as owners and/or managers of the companies which had a controlling stake in Yukos plc, misappropriated 350 metric tonnes of crude oil produced by Yukos's subsidiaries and subsequently laundered the profits by selling the oil through a chain of affiliated trading companies. The money accumulated in this way was transferred to the accounts of hundreds of foreign and Russian companies, controlled by the applicants. The prosecution claimed that those acts amounted to embezzlement (Article 160 of the Criminal Code) and money laundering (Article 174.1 of the Criminal Code).

60. The facts and the legal arguments on which the prosecution case relied are described in more detail below. The following summary is based on the text of the judgment with which the second trial ended; it reflects only those elements of the prosecution case which were retained by the court as the basis for its conclusions.

(i) Obtaining de facto *control over the Yukos group*

61. Yukos was created in the course of privatisation of the State oil sector in 1995. The first applicant was a majority shareholder of Group Menatep Limited (GML) which acquired a large block of shares in Yukos[1] plc at one of the privatisation auctions. As a result, GML became the

[1] It is unclear whether GML became the direct owner of that block of shares immediately after the privatization or some time, and whether this ownership structure remained the same throughout the period under examination, i.e. 1998-2003.

majority (*osnovnoy*) shareholder in Yukos. The second applicant also owned an important block of shares in GML and was its director. Thus, as majority shareholders in GML, both applicants could play a decisive role in shaping Yukos's business strategy. In 1997 the first applicant was elected as the President of the Board of Directors of Yukos.

62. In addition, in order to secure the loyalty of certain senior executives in Yukos, the applicants created a secret parallel system of distribution of the group's profits. Thus, in 1996 the applicants concluded an oral agreement with Yukos senior executives, under which GML undertook to pay Tempo Finance Limited (TFL) 15% of Yukos's profits. Those Yukos senior executives were the beneficiaries of TFL. Such payments were regularly made between 1996 and 2002, when they reached several hundred million USD. In 2002 the agreement between GML and TFL was reformulated and signed on paper. As a result, the applicants secured the loyalty of several leading Yukos senior executives and obtained not only strategic but also operative control over the group (pages 569 et seq. of the judgment). The influence of the minority shareholders within Yukos was thus reduced to a minimum.

63. Through Yukos the applicants gained partial control over Yukos' main subsidiaries, in which Yukos owned 50% or more of the shares: oil-extracting companies, refineries, crude-oil storage terminals, etc. Amongst the biggest oil-extracting subsidiaries of Yukos were Yuganskneftegaz plc, Samaraneftegaz plc, and Tomskneft plc (hereinafter - "producing entities"). Again, the applicants made recourse to various techniques in order to reduce the influence of minority shareholders in those companies.

64. Initially the applicants controlled the producing entities on the basis of "administrative agreements". Thus, on 19 February 1997 such an agreement was imposed on Yukos by Rosprom Ltd., another company which belonged to the applicants and in which the second applicant was a deputy president of the executive board (*pravleniye*) in 1997-1998. Under that agreement Yukos delegated to Rosprom the power to take decisions which would otherwise be within the competence of the executive bodies of Yukos. That "administrative agreement" was confirmed by the general meeting of shareholders of Yukos. On 14 April 1998 Rosprom signed an agreement in similar terms with Tomskneft.

65. In 1998 the applicants registered new companies which operated under "administrative agreements" with the producing entities belonging to the Yukos group. Thus, Yukos Explorations and Production Ltd (YEP) was supposed to operate the group's oil-extracting facilities, whereas Yukos Refining and Marketing Ltd (YRM) was created to operate the refineries. Both YEP and YRM were controlled by Yukos Moskva Ltd (YM), in which the first applicant was head of the board of directors (from 3 July 1998 until 31 March 2000). From 2000 Yukos plc was administered by Yukos Moskva Ltd.

66. Although from 2000 onwards the first applicant was no longer the head of the board of directors of YM and became merely one of its directors, he continued to define the group's policy as the major shareholder in GML and, in this capacity, was able to influence the producing entities' operative decisions. The second applicant was the deputy head of the board

of directors of YRM and YM and was *de facto* the financial director of those companies and of the group as a whole.

67. The system of "administrative agreements" made it possible to protect the mother company (Yukos) from civil and other liability for abusive interference in the business of its subsidiaries (see page 308 of the judgment). Under those agreements the managing companies – such as Rosprom, YRM and YEP – were required to act in the best interests of the producing companies. However, in reality they acted in the applicants' interest only.

68. The applicants thus created a vertically-integrated group of companies where all important decisions were taken by them and their accomplices and then imposed on the "producing entities". The latter thus lost any independence. This enabled the applicants to redirect sales of the oil extracted by the producing entities and prevent the minority shareholders in those entities and in Yukos plc from sharing the profits generated by the sales of crude oil.

(ii) Manipulating the price of oil within the group

69. In 1996, the applicants used their influence to compel the two producing entities – Yuganskneftegaz and Samaraneftegaz – to conclude "general agreements" with Yukos[1]. Those agreements contained an undertaking by the producing entities not to sell their produce independently in the future but only through Yukos. The agreements defined the principles for calculating the price of oil, which was based on the price of "oil well fluid" and provided for an independent evaluation of market prices for this "oil well fluid". On the basis of those general agreements Yukos and its producing entities concluded contracts for the sale of crude oil on conditions which were unfavourable to the producing entities. Those deals were concluded "on the basis of malicious collusion with the representative of another party" and were thus contrary to Article 179 of the Civil Code (page 647 of the judgment; page 9 of the decision of the court of appeal). In 1998 a "general agreement" in similar terms was signed with Tomskneft.

70. Some of the directors representing minority shareholders in the producing entities objected to the practice of concluding contracts on such conditions, and even threatened Yukos with lawsuits. They claimed that the prices indicated in those contracts were much lower than the market price and that the producing entities were thus deprived of their profits. However, the applicants overcame their resistance. To do so, they requested and obtained approval for the existing schemes of oil sales from the general meetings of shareholders[2]. Those approvals covered all past sales and sales over the next three years.

71. In order to obtain those approvals the applicant used various techniques. In particular, general meetings of the shareholders in the

[1] It is understood that those "general agreements" were distinct from the "administrative agreements". While the latter concerned the management of the subsidiaries, the former established the principles of selling the producing entities' oil. The parties are invited to clarify this information.

[2] The judgment, with some exceptions, did not specify how many votes the applicants had at the general meeting of shareholders, how many votes they needed to approve the sales of oil, and why those approvals were obtained in breach of the Public Companies Act.

producing entities were always presided by one of the Yukos executives. In addition, although Yukos and other companies affiliated with the producing companies and owning shares in them ought to have been regarded as "interested parties" under the Public Companies Act of 1995 and, as such, should have been excluded from the voting, they did not acknowledge a conflict of interests and voted at those meetings along with other shareholders (page 9 of the decision of the court of appeal).

72. In some cases, where the applicants did not have the necessary number of votes, they succeeded in neutralising the resistance of "dissident shareholders" by having their shares seized by a court. Thus, in 1999 a Kaluga court opened proceedings against a group of "dissident shareholders" in Tomskneft. In those proceedings a certain Mr V. challenged the title of those persons to the shares of Tomskneft. According to the documents, Mr V. owned one share in Tomskneft. However, in reality he was not even aware of those proceedings or of the fact that he owned any shares. The lawyers working for the applicants had obtained from him, by deceit, a power of attorney. They then purchased in his name one share in Tomskneft, brought a lawsuit against the "dissident shareholders" and lodged a request for interim measures. Those measures consisted, *inter alia*, of a temporary prohibition for the "dissident shareholders" to vote at the general meetings. On 16 March 1999 a judge in a district court in the Kaluga Region issued an injunction against the "dissident shareholders", as requested by the "plaintiff". The applicants' lawyers brought with them a court bailiff to the next general meeting of shareholders of 23 March 1999; referring to the injunction of the Kaluga court, he prevented "dissident shareholders" from voting. As a result, the applicants obtained a qualified majority at the general meeting and all contracts of sales between Tomskneft and Yukos were successfully approved. A few days later the injunction was lifted, the applicants having already obtained what they wanted.

73. At some point in 2000 the producing entities started to sell the oil to Yukos and to the trading companies at auctions[1]. However, the auctions were manipulated by its organiser, who was a senior Yukos executive and loyal to the applicants. Thus, the conditions for prospective buyers were formulated in such a way as to exclude any external competitor. Only the companies affiliated with the applicants, and controlled by them, participated in those "auctions". The lead appraising expert who was supposed to define the fair price of the crude oil had previously worked with the applicants in the Menatep bank, and therefore acted in their interests. As a result, the price of crude oil in the sales contracts was much lower than the real market price which the producing entities would have received if they sold the oil independently.

(iii) Redirecting sales in order to accumulate profits in the Russian "trading companies"

74. To accumulate profits from the sales of oil extracted by the producing entities and, at the same time, to minimise taxes, the applicants

[1] It needs to be clarified whether the system of selling the oil at those "auctions" replaced the previous system based on "general agreements" between Yukos and its subsidiaries

registered over a dozen different trading companies on the territory of several low-tax zones in Russia. Thus, such trading companies were registered in Mordoviya, Kalmykia, the Chelyabinsk Region and the Evenk Autonomous Region, and in the districts known as ZATOs, in particular, in Lesnoy ZATO and Trekhgorniy ZATO. Amongst those companies the judgment mentioned the limited companies (OOOs) Mitra, Grunt, Business-Oil, Vald-Oil, Erlift, Flander, Muskron, Alebra, Kverkus, Kolrein, Staf, Kvadrat, Fargoil, Ratibor and others[1].

75. Some of those companies were created by private individuals who agreed to be nominal owners of those companies but who had never participated in their business activities and had only signed documents (see page 503 of the judgment). Thus, OOO Fargoil was registered in the name of Mr S. as the sole owner, whereas OOO Ratibor was created by Ms V. When requested, Mr S. and Ms V. ceded their shares to companies indicated by the applicants' accomplices.

76. In essence those trading companies were sham entities, which were created for the sole purpose of not paying the full amount of taxes for which the Yukos group would otherwise have been liable had it sold oil directly from Moscow. The difference between the very low price paid to the producing entities and the high price paid by the final buyer of the oil was concentrated partly in the Russian trading companies and partly in foreign trading companies (see below).

77. The Russian trading companies existed only on paper, had the same nominal directors (Mr Pereversin, Mr Malakhovskiy and several other persons) and kept their money in accounts in two Moscow-based banks affiliated with the applicants: DIB bank and Trust bank. All their business operations – preparing contracts, signing shipment orders, submitting tax returns, making bank transfers, etc. – were conducted in Moscow, by a group of employees working for Yukos and its affiliates. Physically the oil and its derivatives did not change hands: the crude oil was transported directly from the wells to the refineries and then, after processing, to end-customers. All of the intermediate companies were necessary only for concentrating profits and avoiding taxes. Although *de facto* the applicants controlled the trading companies, de jure the companies were presented as independent traders.

78. The prosecution provided data on money flows between the trading companies and the producing entities and compared the price paid to the latter with the market price of oil. Thus, for example, in 1998 Yuganskneftegaz sold through the trading companies 25,322,612,411 tons of crude oil for RUB 6,622,270,514; Samaraneftegaz sold 7,450,791,000 tons for RUB 2,097,566,309; Tomskneftegaz sold 199,506 tons for RUB 41,577,050. *In toto* in 1998 the applicants and their accomplices thus misappropriated 32,972,909,411 tons of crude oil, worth RUB 25,645,695,514.

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[1] If "general agreements" provided that the producing entities were selling the oil only through Yukos itself, the question is at what moment did those trading companies start to participate in the sales chain, and what place did they occupy in that chain: immediate purchasers of the oil from the producing entities, intermediate re-sellers or end-buyers (within the group)?

79. It appears that the value of the "misappropriated" oil was calculated on the basis of the "world market price" indicated in the judgment. Thus, for example, in January 1998 the market price of crude oil at the world market varied between RUB 667.7 per ton and RUB 673.77 per ton, while the producing entities received RUB 435.96 per ton. In December 1998 the world market price of crude oil varied between RUB 1229.68 and RUB 1340.84 per ton, whereas the producing entities were paid at a rate of RUB 250.08 per ton.

80. The judgment contained conflicting information on the price paid by Yukos or trading companies to the producing entities. Thus, on page 14 of the judgment it is indicated that in July and September 1998 they were paid RUB 250.08 per ton, while the market price varied between RUB 369.40 (in July) to RUB 638.99 (in September). At the same time, according to a report by the Khanty-Mansyisk branch of the Antitrust Committee, quoted by the court on page 177 of the judgment, Yuganskneftegaz was selling oil to Yukos in July-September 1998 for RUB 144.5 – RUB 207.58 per ton, whereas the average market price in that region was RUB 288 per ton.

81. As follows from the judgment (pages 164 and 354; see also pages 29 and 30 of the judgment by the court of appeal), in order to avoid transactions between the producing entities and trading companies being subjected to tax audits, the applicants tried to ensure that the price at which the trading companies purchased oil from the producing entities did not deviate from the average market price by more than 20%[1].

82. In order to obscure the *modus operandi* of the scheme, the applicants regularly re-directed sales and money flows from old trading companies to the new ones. From January 2000 all sales of oil extracted by the producing entities went through OOO Yukos-M. As from December 2000 most of the sales of Yukos oil were conducted through OOO Y-Mordoviya. In the spring of 2001 some of the oil sales were re-directed to OOO Ratibor (whose director was Mr Malakhovskiy), OOO Sprey and OOO Terren. However, the nature of the sales always remained the same: the producing entities were selling oil to the trading companies at a very low price. That price was defined at farcical "auctions", staged every month by the applicants' accomplices. Thus, in February 2000 the oil was sold by the producing entities to Yukos-M at RUB 750 per ton, whereas on 31 January 2000 the world market price for the "Urals (Med)" and "Urals (R'dam)" oil amounted to RUB 5,535.59 on average. In November 2000 the producing entities were receiving RUB 1,200 per ton of oil from the trading companies, whereas the world market price was RUB 6,040.77 per ton on average. The overall price of oil sold in 1998-2000 through that scheme amounted to RUB 158,492,156,000. The judgment concluded that the pecuniary damage caused by the applicants to the producing entities

[1] It is unclear how it was possible to obtain such a difference between the price of oil on the international markets and the price paid to the producing entities and, at the same time, not exceed the recommended 20% difference between the "inner price" within Yukos and the price of its competitors. It appears that the transfer pricing mechanism included several intermediate companies, and each of them accumulated some of the profits, and at each stage the transactions did not exceed the average price by more than 20%. Alternatively, it may suggest that the competitor companies also applied transfer pricing, or both, or that the 20% requirement started to apply only with the enactment of the new Tax Code.

(Samaraneftegaz, Yuganskneftegaz and Tomskneft) was equal to that amount.

83. In 2001 sales of crude oil and oil derivatives were channelled essentially through OOO Fargoil, another trading company controlled by the applicants. All profits were concentrated in Fargoil's accounts, in two banks controlled by the applicants: Menatep Spb and DIB. For example, according to the judgment in 2001 the applicants misappropriated oil worth RUB 147,394,294,000. Part of that amount was spent to cover the operating costs of producing entities; the remaining part remained in the hands of the applicants and their accomplices. Their net profit from the operations conducted through Fargoil in 2001 amounted to RUB 65,837,005,000.

84. From January 2002 Fargoil was buying oil from Ratibor which, in turn, received oil from the producing entities by "winning" at the monthly auctions. From September 2002 Ratibor was removed from the scheme and all sales went through OOO Evoil, which started to "win" at the auctions and sell the oil on to Fargoil. By the end of 2002 Evoil acquired from the producing entities 24,512,893 tons of oil, for which it paid only RUB 48,636,878,082. According to the judgment, this represented 20-25% of the real market price of that oil on the world market. In July-August 2003 the applicants decided again to redirect money flows by including in the sales scheme a new trading company – OOO Energotreid, also headed by Mr Malakhovskiy as director. Energotreid replaced Fargoil as the main buyer of oil from Evoil, which, in turn, purchased it from the producing entities.

85. Yukos was also involved in the sales scheme. At some stage Yukos played the role of the first buyer of oil from the producing entities; later Yukos was replaced with other trading companies and participated in the sales mostly as a commissioner, whereas the trading companies, such as Fargoil, remained nominal owners of the oil extracted by the producing entities. In 2002, as a commissioner, Yukos received 0.2% of the gross product of the sales of oil on the international market. The gross product of sales which Yukos, as a commissioner, transferred to the accounts of Fargoil, as the nominal owner of the oil, amounted in 2002 to RUB 144,546,628,965. Thus, given the world price of oil, and the costs of production and logistics, in 2002 the net profit to the applicants and their accomplices amounted, for the sales conducted through Fargoil, to RUB 104,852,978,164. As regards the sales of oil and its derivatives on the internal market, in 2002 Fargoil received RUB 75,627,685,010.33 (gross money inflow). The net profit to the applicants and their accomplices, after deduction of the production costs of the oil and its derivatives, amounted to RUB 25,164,128,293 for that period. The judgments referred to the amounts misappropriated by the applicants as a result of the operations on the internal market and abroad in 2003.

86. According to the judgment, between 1998 and 2000 the applicants misappropriated oil worth RUB 492,486,604,892. In 2001-2003 the applicants misappropriated oil worth RUB 811,549,054,000, while their net profits from operations with oil amounted to RUB 399,939,564,505.

(iv) Exporting oil profits from Russia

87. In addition to setting up many Russian trading companies, the applicants created a network of foreign firms registered in various off-shore zones, such as Cyprus, Lichtenstein, Gibraltar, the British Virgin Islands, the Isle of Man, etc.

88. Since the price of crude oil at the border (i.e. in a contract between a Russian trading company and a foreign trading company) was well known, the applicants ensured that the price of Yukos oil would be on average 1 rouble more than the price of oil exported by other big oil companies (page 336 of the judgment)[1].

89. From 1997 most of Yukos's international sales of oil went through a long chain of intermediaries, which usually took the following form: a producing entity – Yukos itself or one of the Russian trading companies – an off-shore trading company, controlled by the applicants – a Swiss trading company controlled by the applicants – the real foreign buyer of the oil. The applicants introduced so many intermediaries in the scheme in order to make it deliberately opaque. Only at the last stage of the chain was the oil sold for the market price. The international sales went through such foreign trading companies as South Petroleum Ltd (Gibraltar), PFH Atlantic Petroleum Ltd (Cyprus), Baltic Petroleum Trading Ltd (Isle of Man), and then to Behles Petroleum SA (Switzerland). Behles Petroleum played a central role in the international sales scheme, since the applicants needed a Swiss counterpart to have a show of respectability. Behles Petroleum had been a real trading company, in the sense that it had personnel involved in selling oil to end-customers.

90. From 2000 the sales scheme was reorganised[2]. Most of the foreign sales of Yukos oil went henceforth to two Cyprus companies: Ruthenhold Holdings Ltd and Pronet Holdings Ltd. Both companies had Mr Pereverzin as director. Mr Pereverzin was the applicants' business partner and worked with them in the Menatep bank in the 1990s. Ruthenhold Holdings and Pronet Holdings served as a "final point" in the sales chain for Yukos export operations. Those and other trading companies on Cyprus were registered at the applicants' request by ALM Feldmans, a Moscow-based law firm, which also organised the opening of the necessary bank accounts, submitted necessary forms and reports, etc.

91. In order to extract capital accumulated on the accounts of Russian trading companies such as Ratibor and Fargoil, the applicants also employed another method. Thus, at their request in 2000 ALM-Feldmans registered two companies in Cyprus: Nassaubridge Management Ltd and Dansley Ltd. Nassaubridge subsequently became the sole owner of Fargoil, while Dansley became the sole owner of Ratibor. The money "earned" by Fargoil and Ratibor were then transferred to Nassaubridge and Dansley in the guise of dividends.

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[1] Again, this information suggests that the price of Yukos oil was not under-valued, and that at the point of leaving Russia Yukos oil was declared at the same price as the oil of its main competitors. Alternatively, it may mean that all Russian oil was sold abroad for a lower price than the "real" market price. The parties are invited to comment on this point.

[2] It is unclear what called for that reorganisation – the investigations begun in certain countries at the request of the Yukos minority shareholders or the applicants' plans to issue Yukos shares on the international securities market.

(v) Dispersing the capital in order to protect it from lawsuits

92. Throughout the period under examination the applicants created a number of interconnected companies abroad, which were intended to serve as a "safety cushion" in the event of lawsuits from shareholders in Yukos or the producing entities or from the State.

93. Thus, in 2001 a minority shareholder in Tomskneft started a public campaign against the applicants, accusing them of misappropriation of the oil extracted by Tomskneft. In order to protect themselves against possible audits and lawsuits, the applicants created, through their accomplices, several new letter-box companies, also registered in off-shore zones. These included: Wellington Interests Ltd, Arely Ltd, Beserra Ltd, Corden Ltd, Casphrain Ltd, Neptune Human Resources Ltd, Travis Ltd, Worcester Ltd, Zulfa Hodlings Ltd, etc. The off-shore "trading companies" transferred money to "cushion companies" under different agreements. Thus, South Petroleum transferred USD 60,293,115 to Wellington Interests under an agreement, dated 1997, which described that amount as a "loan" from South Petroleum to Wellington Interests. South Petroleum subsequently signed an agreement with Corden, stipulating that the former ceded to the latter the right to reclaim from Wellington money due under the 1997 loan agreement, in exchange of a payment of USD 6,008,200. Thus, South Petroleum sold the Wellington's debt to Corden for about 10% of its price. The remaining 90% was henceforth in new hands and was better protected from possible lawsuits. South Petroleum also transferred USD 15,940,000 to Arley. That money transfer was presented as a payment for "promissory notes" issued by Arley. However, those promissory notes were not supported by the assets of the debtor and their real economic value was close to none. As a result, the accounts of the "trading companies" were drained and the money was concentrated in the "cushion companies". South Petroleum and Baltic Petroleum Trading also transferred important sums of money to their corporate owners in the guise of "payment of dividends". Thus, South Petroleum and Baltic Petroleum Trading transferred USD 32,848,000 as "dividends" to their founding company – Jurby Lake Ltd, a company registered in the Isle of Man.

94. In January 2000 the authorities in certain States started investigations in respect of some of the off-shore companies affiliated with the applicants on suspicion of money laundering. The applicants having decided that it was not safe to work through those companies, they changed the structure of distribution and laundering of the profits derived from the sale of Yukos oil. For that purpose the applicants turned to ALM Feldmans, a Moscow-based law firm. ALM Feldmans registered a firm called Wildlife Resources Corporation on British Virgin Islands. By signing fake agreements for the exchange of sales of oil, the applicants organised the transfer of USD 20,005,000 from Jurby Lake to Wildlife Resources.

(vi) Funding ongoing operations and investments in Russia

95. To secure funding of current operations the applicants needed to return part of the capital from the Russian trading companies and foreign firms which were involved in the sales of oil, and which accumulated significant amounts of money on their accounts (such as Ratibor, Fargoil, Energotreid etc). To do so, they used the "promissory notes scheme". Under

that scheme, promissory notes were used as a vehicle for transferring money from the trading companies to the producing entities. The same scheme was used to transfer money to "empty" companies which were later used for investment purposes. As a result of this chain of transactions, "promissory notes" were exchanged for real money. The money was also redistributed in the form of loans between the different companies making up the Yukos group[1].

(vii) Buy-back of Yukos shares; payments to the creditors of Menatep[2]

96. In 1997-1998 Menatep bank, which owned a large block of Yukos shares, borrowed money from two foreign banks – Daiwa Europe and West Merchant Bank. Thus, Menatep borrowed over USD 100,000,000 from Daiwa on a security of 336,551,055 simple shares in Yukos (which represented 13.82% of its shareholding capital), and over USD 125,000,000 from West Merchant Bank on a security of 340,908,790 simple shares in Yukos (15.24% of its shareholding capital).

97. After the financial crisis of August 1998 Menatep defaulted; as a result, Daiwa Europe and West Merchant retained the shares. The applicants decided to return the shares by buying them back from the two banks, but not openly. In the official negotiations with the two banks, the applicants persuaded their managers that Menatep was insolvent and that, in view of the financial crisis in Russia, it would be unable to return the full amount of the two loans. Representatives of Daiwa and West Merchant proposed a restructuring plan, but the applicants artificially protracted the negotiations. At the same time the applicants conducted secret parallel negotiation with Standard Bank of London. As a result, Standard Bank of London agreed, for a commission, to buy the shares from Daiwa Europe and West Merachant and transmit it to DIB bank, controlled by the applicants. In 1999 DIB bank signed an agency agreement with the Standard Bank of London and transferred a pre-payment to it; on the basis of that agreement Standard Bank approached Menatep's two creditors (Daiwa and West Merchant) and acquired their claims against Menatep, together with the shares, at a significant discount. Standard Bank of London paid the two banks about 50-60% of the original amount of the loan, received the shares, and immediately thereafter transferred those shares to DIB bank. DIB bank paid Standard Bank the price of the shares and its commission. Later DIB bank sold Yukos shares to several companies controlled by the applicants, including Yukos Universal Ltd and Wilk Enterprises Ltd.

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[1] It is not entirely clear how the money was "returned" to the producing entities and to Yukos itself. The prosecution implied that the "trading companies" had been accumulating profits from the sales without any reciprocal obligation vis-à-vis the producing entities or Yukos to return those profits in the future. Therefore, to reinvest the money the applicants needed to fabricate a sham legal transaction which would explain the transfers. In such transactions the money accumulated on the trading companies' accounts would be exchanged for something valuable – for example, the promissory notes of Yukos. However, those promissory notes would have to be repaid, sooner or later, and the "loans" would have to be returned. The question is how, in this scheme, the producing entities' legal obligations to the trading companies would ultimately be extinguished.

[2] The question arises whether those facts amounted to a separate episode incriminated to the applicants, or whether it was an illustration of various forms of "legalization" used by the applicants to invest the profits from oil.

98. To finance that operation the applicants decided to use the money of Yukos itself. However, they did not wish to show who was really purchasing the shares. To give the whole scheme a gloss of legality, the applicants organised the following chain of transactions. The necessary amounts of money were accumulated in the accounts of OOO Flander and OOO Alebra, two Russian trading companies involved in the operations with Yukos oil. Yukos issued 35 promissory notes, worth RUB 6,228,253,842, at an interest rate of 30% per annum. The date of issue for those promissory notes was indicated as 1 October 1999; they were due for payment after 28 December 2000. Yukos then transmitted those promissory notes to MQD International Ltd, a company registered in the British Virgin Islands. MQD, acting through a network of intermediary foreign companies (such as Jerez Ltd and Mezview International Ltd), then sold promissory notes to DIB, which re-sold them to Flander and Alebra. Flander and Alebra paid RUB 7,257,663,538.11 for those notes, an amount which already included the interest accrued. This sum went to Mezview International, which transferred it to Yukos Universal Limited. The latter, in turn, paid it to DIB bank in exchange of the Yukos shares. As a result of that operation, Yukos Universal and Wilk Enterprises received Yukos shares, whereas Flander and Alebra received Yukos plc promissory notes, which Yukos had to buy back when the time came. In essence, the buyback of the Yukos shares in the interest of the applicants was funded by Yukos itself, with money earned from the oil extracted by its subsidiaries.

99. In 1999 the Central Bank of Russia withdrew Menatep bank's licence and a liquidation procedure was initiated. In the process of liquidation, the applicants, on behalf of Yukos, proposed to some of Menatep's foreign creditors that the latter's debts could be covered by Yukos's money; at the same time, the applicants sought to extinguish the Menatep's financial obligations to Yukos itself. As a result of a chain of transactions, which were economically unfavourable to Yukos, Menatep extinguished its debts whereas Yukos paid some of Menatep's creditors significant amounts of money (page 589 of the judgment). This enabled the applicants to avoid a major conflict with Menatep's foreign creditors.

(viii) Reorganisation of the company in the 2000s. Withdrawal of capital in 2003-2004

100. In the early 2000s the applicants started to prepare the group for the listing of Yukos shares on the international stock market. For that purpose they reorganised the internal structure of the group, made it more transparent for international investors and even started to include some of the Yukos trading companies (such as Ratibor or Fargoil) in the consolidated financial reports prepared in accordance with the international rules of accounting (Generally Accepted Accounting Principles, GAAP). In addition, the applicants did not disclose to the auditors (PricewaterhouseCoopers, PwC) their links to some of the companies which participated in the sales chain, such as Behles Petroleum, South Petroleum and Baltic Petroleum (page 567 of the judgment), and did not disclose the true nature of the operation for the secret buyback of Yukos shares from Daiwa and West Merchant banks.

101. Under the Russian accounting rules, most of the Yukos affiliates were considered as independent actors. The system of subsidiaries was organised in such a way as to conceal some of the affiliation links from the Russian authorities and the public in general (page 606 of the judgment). In the official tax returns for 1999–2004, submitted by Yukos plc to the Russian tax authorities under the then applicable rules of accounting, none of the companies registered in the Lesnoy and Trekhgorniy ZATOs was included in the list of "persons affiliated with Yukos plc" (pages 326 and 328 of the judgment). At the general meetings of Yukos shareholders in 2002 and 2003 the first applicant addressed the shareholders, but did not mention the risks related to transactions with affiliated companies, which required approval by the competent bodies of Yukos. Many Russian minority shareholders were not aware of the existence of "consolidated financial reports" prepared under the GAAP rules (page 611 of the judgment), because these were available only in English and was only published on the company's website. The judgment concluded that the applicants deliberately misinformed the shareholders about the inner structure of the company and the affiliation links between Yukos and the trading companies.

102. Finally, even after the reorganisation and inclusion of some of the Yukos subsidiaries in the GAAP reports, those companies remained bound by secret obligations and "equity option contracts" with the companies affiliated with the applicants, which were not mentioned in the consolidated reports. Those secret agreements permitted the applicants to assume control of those companies or their funds at any moment.

103. According to the judgment, although the applicants reinvested a large part of the profits from the sale of oil to Yukos and its subsidiaries, and included the financial results of those subsidiaries in the consolidated report under the GAAP system, this served only the interests of the applicants themselves. It all that raised the capitalisation of Yukos and inflated the price of its shares. Thus, in 1999 under the Russian accounting rules, Yukos's profits amounted to USD 228 million, whereas, according to the consolidated report which included trading companies and was prepared under the international rules (US GAAP), Yukos's profits amounted to USD 1,152 million. In 2000-2002 the applicants, through Yukos Capital, concluded a number of very profitable deals with small blocks of Yukos shares. By attracting foreign investors on the open market and selling them a small part of Yukos's capital, the applicants tried to legalise their own status as lawful owners of the shares. The applicants concealed from the foreign investors the fact that they fully controlled the company and its profits.

104. After the start of the criminal case against the applicants, many of the documents concerning Yukos's foreign affiliates were physically removed from Yukos's offices and transferred to the companies' foreign offices, out of reach of the Russian authorities. The applicants never provided information about the foreign subsidiaries to the Russian authorities and kept all documents in their offices abroad. As a result, when the applicants lost control over the "mother company", i.e. Yukos plc, they were still able to control some of the "daughter companies" abroad, which had accumulated significant assets.

105. According to the judgment, after their arrests in July and October 2003 the applicants continued to withdraw capital from the trading companies which were formally affiliated with Yukos and which accumulated proceeds from the sales. Those funds were transferred to companies controlled by the applicants, and namely to Yukos Capital S.a.r.l. In September and October 2003 a large proportion of the funds concentrated in the Yukos affiliates (USD 2.6 billion) was withdrawn from their accounts and transferred for the purchase of a large block of shares in Sibneft plc, another large Russian oil company (pages 562 et seq. of the judgment). Using that block of Sibneft shares as security, Yukos borrowed USD 2.6 billion from Société Generale, a French bank. That amount was transferred to the accounts of Yukos and its subsidiaries so that they might continue their usual operations.

106. While in remand prison, the first applicant, acting through his lawyer and in consort with the second applicant, ordered his accomplices and business partners to transfer money from the accounts of Nassaubridge and Dansley to the accounts held by the company Brittany Assets Limited in Citibank and Barclays Bank, and onwards to Yukos Capital S.a.r.l. (see page 23 of the judgment by the court of appeal)[1]. Some of those sumes were returned to Yukos and its subsidiaries, that is, the producing entities and trading companies. However, that money was transferred in the guise of a "loan" with interest, so that Yukos became indebted to Yukos Capital. *In toto*, Yukos Capital provided over USD 2 billion to Yukos and its affiliates in loans. According to the judgment, those loans were supposed to maintain the process of oil extraction in the expectation that the company would remain in the hands of the applicants.

(c) Motions by the defence for suppression of evidence

107. In the course of the proceedings the prosecution submitted to the court a large volume of documentary evidence and expert evidence. That evidence was intended to demonstrate the applicants' leading role in setting up those schemes, to prove the unlawfulness thereof, and to quantify the losses of the minority shareholders and the amounts of property "embezzled" and "laundered" by the two applicants. The case for the prosecution relied, to a large extent, on evidence obtained as a result of multiple searches and seizures in the premises of Yukos, in the applicants' houses, in the offices of the lawyers who provided legal services to Yukos and to the applicants personally, and in the banks which managed the accounts and assets of Yukos and its affiliates.

108. In response, the defence sought to supress evidence obtained by the prosecution in the course of many searches and seizures conducted in 2003-2007. Some of those motions were not examined directly at the trial, the court having decided that they would be resolved in the judgment.

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[1] The domestic judgments do not specify clearly the evidence which allegedly confirmed that the applicants were giving orders from the remand prison. Was that conclusion based on any particular evidence or on the general understanding that such operations could not have been performed without the applicants' knowledge and agreement?

(i) Prosecution evidence obtained as a result of searches and seizures

109. The applicants alleged that the court ultimately rejected all motions on suppression of evidence lodged by the defence.

(α) Motions rejected in the judgment

110. Those motions which were resolved in the judgement concerned the following items (pages 628 et seq. of the judgment):

- seizures in the Trust Bank and Activ Bank in 2004-2005;
- search warrants ordering search and seizure in the premises of ALM Feldmans of 12 November 2004 and 14 December 2004;
- record of the search in the premises of ALM Feldmans of 12 November 2004 (seizure of documents) and 15 December 2004 (search);
- search warrant for the premises at 88a, Zhukovka village, of 8 October 2003;
- record of the search of 9 October 2003;
- seizure warrants concerning documents in the possession of PwC, dated 3 March 2005 and 7 June 2005;
- record of the seizures of 14 March 2005 and 8 July 2005 in the premises of PsC;
- record of the seizures (PwC?) of 19 January 2007 and 8 February 2007;
- seizure warrant by the Basmanniy District Court of Moscow of 26 December 2006;
- records of the seizures of 9, 10, 12, 16 and 19 January 2007, based on the search warrant of 26 December 2006[1].

111. The defence indicated that the contested evidence was obtained on the basis of search and seizure warrants issued by the prosecution without prior approval by a court. In the opinion of the defence, seizures in the banks, law firms and audit companies could not have been conducted on the sole basis of a decision by the prosecutor. According to the defence, only the seizures of 29 December 2006 and 17 January 2007 were based on a court warrant (those of 26 December 2006 and 15 June 2007 respectively). Other seizures (those of 14 March 2005, 8 July 2005, 9, 10, 12, 16 and 19 January 2007 and 8 February 2007) were conducted without such a court warrant and, therefore, their results were invalid.

112. The defence referred to Judgment No. 13-11 of the Constitutional Court of 29 June 2004, which provided that where "sectoral" legislation (i.e. specific to a certain area) established additional guarantees for persons affected by the investigative measures, that legislation must prevail even if the CCrP itself, as a *lex generalis*, did not provide for such guarantees. The applicants also referred to Ruling No. 439-O of the Constitutional Court of 8 November 2005, which indicated that a search in a lawyer's office was possible only with the prior approval of a court. The defence believed that the seizures without a court warrant were contrary to the Audit Act (Federal Law No. 119-FZ of 7 August 2001) and Ruling No. 54-O of the Constitutional Court of 2 June 2006.

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[1] It is not clear which court order authorised which search and seizure. The parties are invited to comment on this point.

113. The court refused to supress evidence. It held that the CCrP required a court warrant only for seizures where a document to be seized contained information about the bank accounts and deposits of private individuals (Article 183 of the CCrP, read in conjunction with Article 29, part 2 point 7). However, all of the documents seized in the Natsionalniy Bank Trust, Investitsionniy Bank Trust (previously known as DIB bank) and Aktiv Bank concerned the bank accounts of legal persons. In addition, the lawfulness of seizures in those three banks had already been confirmed in the judgment concerning Mr Malakhovskiy and Mr Pereversin of 1 March 2007. With reference to Article 90 of the CCrP, the court ruled that those findings by the court in the previous case "can be considered established without additional verification" (page 631 of the judgment).

114. As to the seizure in the law offices of ALM Feldmans, the court noted that Ruling No. 439-O was adopted by the Constitutional Court on 8 November 2005, whereas the impugned searches had been carried out in 2004. In addition, the documents seized from ALM Feldmans did not concern the "provision of legal assistance to persons or organisations". The documents obtained concerned the operations of one of the partners in ALM Feldmans, Mr Iv., who managed the accounts of several commercial organisations which had been used by the members of the organised group to legalise the assets which they had misappropriated. The court also referred to the rulings of the Basmanniy District Court of 21 September 2007 and 30 October 2007, whereby the motion on suppression of evidence lodged by the defence had been dismissed.

115. The court refused to supress documents obtained as a result of the seizures in the office of Mr Drel, the lawyer for the two applicants, during the search at 88a, Zhukovka village, of 9 October 2003. The court found that the documents seized were not his case file[1] and did not concern the provision of legal assistance to persons and organisations[2]. Those documents concerned Mr Drel's participation in the financial operations in favour of persons who were part of the organised criminal group. The office of ALM Feldmans was registered at a different address in Moscow. The reference by the applicants' lawyers to section 8 of the Advocacy Act was misplaced. Article 182 of the CCrP did not contain any requirement to obtain a court warrant in the event of a search in a lawyer's office. In addition, the lawfulness of the search in the premises located at 88a Zhukovka village had been confirmed by the judgment of 16 May 2005, in the first case against the applicants.

116. Seizures in the premises of PwC on 3 March 2005 and 7 June 2005 were found to be lawful, since in the period before 5 June 2007 Articles 29 and 183 of the CCrP did not require a court warrant for a seizure in an office of an audit firm.

117. The court found that the seizures of documents in the premises of PwC on 10, 12, 16, 19 January and 8 February 2007 had been lawful. Thus, they had been authorised by the decisions of the Basmanniy District Court. Given the volume of documents to be seized, one warrant from the

[1] It is unclear what the court meant by this.

[2] It needs to be clarified how the court distinguished activities related to the "provision of legal assistance" and other activities in the context of the present case.

Basmanniy District Court sufficed to cover several consecutive days of seizure.

118. The defence sought to exclude documents obtained during the search of 17 December 2004, conducted in Mr Pereversin's flat without a court order. However, the court found that those documents were to be admitted: the search was conducted without a court warrant because it was an "urgent search", and immediately afterwards the investigator applied to a court and obtained approval for the search (ruling of the Basmanniy District Court of 17 December 2005). Under Article 165 part 5 and 182 of the CCrP the investigator had a right to examine objects and documents obtained during the search before having obtained a court's approval for the search itself (page 636 of the CCrP).

(β) Motions rejected directly at the trial

119. In addition, the defence forwarded a number of objections to certain documents produced by the prosecution: some did not contain signatures, did not contain official stamps, or had been added to the case file without the necessary formalities. Pages were missing from some other documents pages. Some of the documents had been obtained during searches at which no inventory of objects and documents seized had been made. However, the court dismissed those objections as unfounded, irrelevant or unimportant.

120. The defence objected to the use of a written record of the questioning of witness Mr A. by the investigators. According to the defence, his oral submissions, audio-recorded by the investigator and also submitted to the court, differed significantly to what was set out in the written record. However, the court ruled that the law did not require word-for-word recording of the oral submissions, and that Mr A. had made no objections to the written record of his questioning and later confirmed his testimony before the court. Therefore, it reflected accurately the essence of his depositions.

121. The defence sought exclusion of allegedly unlawful intercepts of telephone conversations between Ms Bakhmina and Mr Gololobov, the two Yukos lawyers, in order to check the veracity of the transcripts. The court initially granted that request and ordered the GPO to produce those audio recordings, made in late 2004. However, on 29 September 2009 the court received a letter from the GPO whereby the latter refused to produce those recordings, on the ground that it might jeopardise the interests of investigations in other cases, namely case no. 18/41-03, which concerned 20 suspects. As a result, on 16 November 2009 the court rejected the motion to listen to the audio records[1].

122. The defence sought exclusion of other "unlawfully obtained" evidence. In particular, they argued that the order to sever criminal case no. 18/432766-07 from case no. 18/41-03 had been unlawful, that "copies" of the procedural documents related to other criminal cases could not be admitted in evidence, that there was no inventory of the materials contained in the original ("old") case file, and that, as a result, the defence was unable

[1] See Annex 4 to the application form.

to establish whether the "old" case file contained any potentially important exculpatory material.

123. The defence also claimed that the process of "gathering evidence" by the prosecution within the "new" case mostly consisted of inspecting the materials of the "old" case and regularly adding bits of the "old" case file to the new one. The defence claimed that this was not a proper way to gather evidence and that all the documents so added were inadmissible.

124. The defence also sought suppression of documents translated from foreign languages, since the translation was sub-standard and contained gross errors. However, the court concluded that the translations were appropriate.

125. The defence claimed that information from the Yukos website was obtained more than a year after the arrest of the two applicants and was therefore unreliable. The defence sought examination of the disc on which the investigator recorded the content of the website, but the court rejected that motion.

(ii) Expert evidence for the prosecution

126. The defence sought suppression of several expert reports obtained by the investigators at the pre-trial investigation stage and submitted to the court. According to the defence, all of that prosecution evidence had been obtained before the applicants were formally charged; as a result, the applicants or their lawyers had not participated in the preparation of those reports, were unable to put questions to the experts, to include their experts in the expert team and to enjoy other rights given to the defence by Article 198 of the CCrP.

127. The defence also alleged that the prosecution expert witnesses had had at their disposal certain materials which had not formed part of the case file subsequently submitted to the trial court for examination. The defence alleged that the prosecution did not verify what sort of "source materials" the experts had and did not include it in the case file – they only attached the expert reports as such. Accordingly, in the second trial it was impossible to compare those "source materials" with the conclusions of the experts and to verify whether they had been adequately interpreted by the experts.

(α) Expert report by Kvinto-Konsalting Ltd of October 2000

128. The defence sought suppression of expert report no. 2601-12/2000, prepared by experts from the private evaluation agency Kvinto-Konsalting Ltd., which concerned evaluation of the price of Tomskneft shares. The court concluded that on 2 October 2000 the investigator Mr Shum. commissioned an expert examination and explained to the two experts – Mr Koz. and Mr Rus. – their rights and responsibilities. The expert report was prepared in accordance with the law and duly signed by the experts, who had all necessary qualifications. The applicants received a copy of that expert report in 2007, when they became suspects in the second criminal case.

(β) Expert report of June 2004

129. The defence sought suppression of an expert report of 24 June 2004 ("evaluation report"), prepared on the basis of the investigator's decision of 15 April 2004. The defence indicated that they had not been informed about the decision of 15 April 2004 to commission such a report; that the expert report did not contain certain elements which were mandatory under Article 204 of the CCrP; that in essence the examination was "repetitive" (*povtornaya*), that the experts were invited to answer legal questions falling outside their professional competency; that the experts were not given all necessary materials and, at the same time, that some of the materials given to them had not been part of the case file in the applicants' case.

130. However, the court ruled that when the investigator had ordered the examination, the applicants had had no status within the criminal proceedings. When they received a copy of the expert report, namely at the time they were given access to the materials of the case file under Article 217 of the CCrP, they had been able to ask the investigator for further examinations, but had failed to do so. The court heard expert Mr Shk. and concluded that the examination had been conducted with all necessary diligence and all formalities had been respected. The questions put to the experts were not "legal" but related to the regulations in the sphere of evaluation activity. The materials of the expert examination were severed from the "main case" (case-file no. 18/41-03) in accordance with the law. The law did not require that all the materials which served as a basis for the experts' conclusions be severed, together with the expert report (page 645 of the judgment).

(γ) Expert reports by Mr Yeloyan and Mr Kupriyanov of February-March 2006 and January 2007

131. The applicants sought suppression of expert reports prepared by Mr Yeloyan and Mr Kupriyanov on 22-25 January 2007 ("economic and accounting assessment") and the expert report by Mr Yeloyan prepared on 8 February-28 March 2006 ("informational and accounting assessment")[1].

132. The first was ordered by the decision of the investigator of 22 January 2007 within criminal case no. 18/41-03. All materials concerning that expert examination were severed from the "main case" and attached to case file no. 18/432766-07, which was later submitted to the Khamovnicheskiy District Court of Moscow. The experts were given access to the materials of case no. 18/41-03 and to the accounting databases of DIB bank and the Moscow branch of Menatep SPB bank for 2001.

133. The defence sought to obtain disclosure of the "source materials" which had served as a basis for the expert conclusions, as well as the questioning of Mr Yeloyan and Mr Kupriyanov. However, this it was refused. The court concluded that the investigator's decision had been lawful, that the experts had been independent and qualified and had had access to all necessary source materials (without, however, reviewing those materials directly). The applicants had received a copy of their report and were able to ask the prosecution to conduct additional expert examinations.

[1] The parties are invited to explain the subject-matter of those two reports, since their titles may be somewhat misleading.

134. According to the judgment, the second expert examination (described as an "informational and accounting assessment") was prepared within case no. 18/325543-04 and was later joined to case no. 18/41-03 in accordance with the law and on the basis of the investigator's decision of 8 February 2006. The court repeated that it had no doubt that Mr Yeloyan was competent to conduct the expert examination entrusted to him. The fact that Mr Yeloyan had participated in other examinations at the request of the investigator was not indicative of bias. The court also observed that the applicants had no procedural status as suspects or accused within case no. 18/325543-04 and therefore had no procedural rights in respect of materials and evidence obtained within that investigation.

(δ) Expert report of February 2007

135. The defence sought suppression of expert report of 2 February 2007 prepared by Mr Chernikov and Mr Migal, police experts from the Moscow Region police forensic centre (expert report no. 8/17). That report concerned accounting practices and rules (page 651 of the judgment).

136. The court established that the applicants had been informed about the expert examination on 6 February 2007 (the first applicant) and 10 February 2007 (the second applicant). On those dates the applicants were handed a copy of the investigator's decision ordering the examination and the expert report itself. Since at that point the pre-trial investigation was still pending, the applicants could have asked the investigator to put additional questions to the experts, to carry out the investigation in a specific expert institution or to appoint specific experts to the expert team. However, the defence did not lodge such a motion. The court concluded that the defence had failed to use their rights as provided by Article 198 of the CCrP.

137. The applicants also questioned the experts' qualifications and competency to participate in such examinations, but the court dismissed that argument.

138. The defence's next argument related to the questions which the investigator put to the experts. The court replied that those questions had been understood by the experts and they had not asked for any clarifications from the investigator. The court held, in particular, that it was not disputed by the defence that "accounting" is a branch of the "science of economics".

139. The defence indicated that the investigator's order did not specify which materials had been submitted by the prosecution to the experts for examination, and that the examination was started on the same day. However, the court held that the CCrP did not require the investigator to specify the materials which were handed to the experts for examination, and that the experts had been free to start working with the case file on the same day as the examination had been commissioned.

140. Finally, the court observed that any possible criticism by the defence as to the quality of the questions put to the experts, and to the quality of the answers received from the experts, would be analysed by the court when it examined the essence of the experts' conclusions.

(d) Motions by the defence to have prosecution witnesses (both factual and expert witnesses) examined at the trial

141. The defence sought the personal appearance of a number of prosecution witnesses at the trial, but this was refused. Thus, the court refused to hear the following expert witnesses for the prosecution: Mr Ivanov, Mr Kuvaldin, Mr Shepelev, Mr Yeloyan, Mr Kupriyanov, Mr Chernikov and Mr Migal[1].

(e) The case for the defence

142. The defence started to present their case on 5 April 2010 and concluded on 22 September 2010. The applicants pleaded not guilty. Their position can be summarised as follows.

143. The applicants challenged the territorial jurisdiction of the Khamovnicheskiy District Court to examine the case.

144. On the merits, the defence insisted that the prosecution had failed to prove that the applicants and their accomplices had been "shadow bosses" of Yukos and that the official executive bodies of Yukos and its subsidiaries had not played any important role in the decision-making process.

145. The oil allegedly "stolen" from the producing entities had never been physically appropriated by the applicants. It was physically impossible for the applicants to steal 350 million tons of crude oil. It could easily have been ascertained, from the data collected by the automatic system which registered oil in the pipelines, how much oil was extracted, refined and shipped abroad by the producing entities. The tax returns and other financial reports by the producing entities never indicated that any amount of oil had been "stolen" or had otherwise disappeared. When the State-owned company Rosneft purchased shares in the producing entity Yuganskneftegaz at an auction, organised to cover Yukos's tax arrears, it paid a significant sum of money for that company, which showed that the company had still been in very good shape after many years of the alleged "theft" of oil from it.

146. In 2000-2003 all of the producing entities were profitable companies; during that period the producing entities spent RUB 247.1 billion on extracting oil and received RUB 297.5 billion for its sale. Therefore, the net profits of the producing entities were over RUB 50 billion. Those profits remained within the producing entities and were reinvested in order to increase the extraction volumes. The producing entities knowingly shipped the oil to the end-customers.

147. The use of "transfer prices" for internal sales – i.e. sales between affiliated entities belonging to the same group – was normal practice in many Russian and foreign companies, such as, for example, Lukoil or TNK. The fact that those sales were conducted through a chain of several trading companies administered by "directors" with limited powers was also common business practice. The system of "transfer pricing" within the group was perfectly lawful and did not violate the rights of any party.

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[1] From the applicants' submissions it is not always clear which expert examinations were prepared by those experts. The applicants are requested to comment on this point. The Government are requested to specify whether the defence sought the examination of those witnesses, and if so when, and what was the court's reason for not summoning them.

148. The use of "transfer pricing" did not infringe on the interests of the minority shareholders in the producing entities, since, in any event, Yukos as the main shareholder was entitled to receive profits from its subsidiaries in the form of dividends. "Transfer pricing" only changed the form of redistribution of profits within the group.

149. The "international market price" of oil, calculated on the basis of the prices applicable to oil in the sea ports of Amsterdam or Rotterdam, was much higher than the domestic price which prevailed in Russia at the time. It was wrong to compare the "international market price" with the price of "oil well fluid" which was extracted by the producing entities in the Siberian oilfields. In any event, the prosecution failed to indicate at what moment the oil was misappropriated: when extracted, transported, shipped to end-customers, etc.

150. The conclusion of "administrative agreements" with the producing entities and, more generally, the application of transfer pricing within the group brought stability and was in the interests of the producing entities, which received profits and sufficient investments, and capitalisation of their shares increased.

151. The financial results of the companies which were "within the perimeter of consolidation of Yukos" were included in the consolidated financial reporting and submitted to all interested parties: shareholders, auditors, tax inspectors, etc. The public and the authorities had access to all crucial information, in particular on the prices of oil, the group's consolidated income, the sales chain, etc. All of the financial documentation and reports by Yukos and its affiliates were submitted to PricewaterhouseCoopers (PwC) for audit. Yukos employees never misinformed the auditors and provided them with accurate information. The withdrawal by PwC of their audit report was, in the applicants' view, the result of very serious pressure exerted by the investigative authorities on PwC employees, who had been threatened with criminal prosecution.

152. The applicants alleged that the profits of the Yukos group were fairly reinvested in Yukos itself and its main subsidiaries. Thus, the group spent USD 4.5 billion on field production, reconstruction of refineries, gas stations, etc. Yukos covered all costs related to the transportation of oil through the pipelines. USD 9.431 billion were spent on the acquisition of new assets: shares in Sibneft, Arcticgaz, Mažeikių Nafta, Rospan International, Angarskaya Neftekhimicheskaya Kompaniya, Transpetrol, Sakhaneftegaz, Vostochno-Sibirskaya Neftyanaya Kompaniya, Urengoy INK, as well as acquisition of additional blocks of shares in Yukos subsidiaries such as Yuganskneftegaz, Samaraneftegaz and Tomskneft. USD 2.6 billion were paid in dividends to the shareholders of Yukos. Certain amounts were paid as bonuses to the company's management and to external consultants. By 2003 the gross income of the group for the previous years was fully reinvested within the group; the USD 2.7 billion in cash which were on its accounts represented a loan from a French bank, Société Generale.

153. In respect of the accusations concerning the buyback of the Yukos shares from Daiwa and West Merchant banks, the applicants explained that those two banks acted at their own risk and, in any event, received a bigger proportion of the debt compared to what international creditors received

from the Russian Government for the latter's obligations after the 1998 crisis.

154. The applicants maintained that the validity of the agreements between Yukos and the producing entities had been examined in dozens of court proceedings, and that the courts had repeatedly confirmed the lawfulness of those agreements and the contracts for the sale of oil concluded on the basis thereof. Furthermore, all of those agreements had been duly approved by the general meetings of shareholders, pursuant to Public Companies Act.

155. The applicants explained the fact that the company's auditors' – PricewaterhouseCoopers – withdraw their audit reports by referring to threats and pressure exerted on the auditors by the Russian authorities.

156. Finally, the applicants maintained that in previous court proceedings before the commercial courts concerning the tax-minimisation schemes employed by Yukos, the courts had calculated taxes due by Yukos to the State on the basis of the assumption that all of the oil belonged to Yukos itself. By bringing the applicants to criminal liability for misappropriation of the oil, the authorities were in essence seeking to punish them again for acts which had been characterised as "tax evasion" in the earlier proceedings. The State's position was self-contradictory: it had first recovered taxes due on the oil operations from Yukos itself, and then asserted that all of that oil had been misappropriated by the applicants. Under Russian law it was impossible to bring a person to criminal liability for "laundering" of money acquired as a result of tax fraud.

(f) Evidence proposed by the defence and examined by the court

157. Several persons appeared at the trial and were examined as witnesses for the defence. Thus, the court examined Mr Kasyanov (a former Prime Minister, who described the practice of transfer prices in vertically integrated companies), Mr Mirlin (who explained the difference between oil prices on the international and domestic markets), Mr Vasiliadis (whose evidence concerned the positive effects of transfer pricing for the producing entities), Mr Khon (a specialist who compared the structure and operating mode of Yukos and other Russian companies), Mr Gerashchenko (a former head of the Central Bank, who testified about the withdrawal of PwC's audit report) and Ms Dobrodeyeva (Mr Lebedev's personal assistant, who testified about his absence from Russia on certain dates).

158. Mr Gilmanov and Mr Anisimov were former directors of Yuganskneftegas and Samaraneftegas. They testified that, after the conclusion of administrative agreements with Yukos Explorations and Production Ltd. (YEP), the producing entities retained a sufficient degree of independence in all areas except financial matters, and that those agreements had made sense because they increased the companies' capitalisation. The producing entities did not have the goal of maximising profits.

159. The court heard testimony from Mr Filimonov, Mr Khamidullin, Mr Pryanishnikov, Mr Ponomarev, Mr Sannikov, Mr Konovalov, Mr Garanov, Ms Gubanova, Ms Zhidareva and Mr Afanasenkov. They testified that it would have been physically impossible to steal crude oil from the producing entities in the amounts indicated in the bill of

indictment. They also asserted that "general agreements" concluded between Yukos and the producing entities were legal under Russian law, and that their legality had been confirmed in numerous decisions by the domestic courts.

160. The court heard Mr Wilson, a former auditor with PwC and later an internal auditor for Yukos. He explained that all profits within the "perimeter of consolidation" remained within the group and that the applicants were unable to misappropriate them.

161. The court heard Jacques Kosciusko-Morizet, one of Yukos's independent directors. He testified that all decisions in the company had been taken by collective executive bodies, that PwC had never complained that it had received incomplete information from the applicants and that PwC had withdrawn its audit reports under pressure.

162. The court heard Mr Khristenko, Deputy Minister of Industry and Trade. He testified that there had been very few independent buyers of oil in Russia in 1998-2003, and that all of them were under the control of vertically integrated companies which imposed "transfer prices" on them. By definition, "transfer prices" within a company did not correspond to the market price. Similar testimony was given by Mr Gref, a former Minister of Economic Development.

163. In the applicants' words, the court rejected all but one request by the defence to call expert witnesses for the defence to testify orally at the trial. The only expert witness who testified for the defence was Wesley Haun, a US specialist in the energy industry. The only reason that the court agreed to hear him was that the prosecution had not objected. Mr Haun testified on 31 May 2010 and explained to the court that Yukos's business practices had been normal for a vertically integrated company and that the internal organisation of the sales within the group benefited minority shareholders and subsidiaries.

(g) Questioning of the witnesses at the trial

164. According to the applicants, some of the prosecution witnesses gave evidence which contradicted the position of the prosecution and supported the defence's position.

165. Thus, during his questioning on 31 August 2010 Mr Pereverzin testified that during the investigation of his own case he had been offered a suspended sentence, instead of a real prison term, in exchange for his testimony against the applicants.

166. According to the defence, Mr Wilson (a tax director of PwC and a witness for the defence) was harassed by the prosecution during his questioning at the trial. Thus, the prosecutor insinuated that Mr Wilson was himself guilty of tax evasion and had aided the defendants in their criminal operations. When Mr Wilson was about to leave the courtroom, the prosecution handed him a summons, ordering him to report to the GPO's premises on the following day for questioning.

167. When the prosecutors did not like a witness's oral statements at the trial, they insisted on reading out records of his or her questioning by the investigators, and the court always granted such motions. In all, the prosecutors read out the questioning records of some forty-two witnesses who gave evidence at the trial.

(h) Evidence produced by the defence but not admitted by the court for examination

(i) Refusal to accept Mr Haun's written opinion

168. Having heard Mr Haun in his capacity as a "specialist", the court simultaneously refused to admit his written report, prepared earlier, on the same issues. The court noted that at the point that report was prepared Mr Haun did not have the procedural status of "specialist" and his written report was therefore inadmissible (trial record of 1 and 7 June 2010).

(ii) Refusal to accept written opinions and oral submissions by other expert witnesses

169. Following objections by the prosecution, the court refused to hear all other expert witnesses whose testimony was offered by the defence. In particular, the court refused to hear[1]:

- Mr Dages (an expert in economics and finance);
- Mr Lopashenko (a law professor and a legal expert);
- Mr Delyagin (an economist and a specialist in economic crimes);
- Mr Romanelli (an investment banking expert);
- Mr Hardin (a forensic economic analyst);
- Ms Rossinskaya (a forensic accountant);
- Mr Savitskiy (an expert in accounting, credit and finance, and evaluation activities).

170. According to the applicants, all of those persons were distinguished experts in the relevant fields and had extensive practical experience.

(iii) Refusal to accept exculpatory documentary evidence

171. The defence produced documents which, in their view, proved the applicants' innocence, but the court refused to admit that evidence to the case file. Thus, the defence produced the following items:

- RSBU financial reporting of Yukos subsidiaries, certified by PwC;
- Yukos's US GAAP financial statements;
- Yukos documentation describing production and sales processes and capital expenditure;
- legal explanations on Yukos's international corporate structure;
- reports by the State-appointed bankruptcy receiver for Yukos;
- copies of materials from the bankruptcy case examined by the Commercial Court of Moscow in respect of Yukos (case no. A40-11836/06-88-35B).

172. Apparently, all of those motions were rejected and those materials were not added to the case file[2].

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[1] It needs to be clarified, in each instance, what was the reason for the court's refusal to hear the particular expert witness.

[2] The application form is silent on what reasons were adduced by the domestic court for not admitting those documents in evidence. The parties are invited to develop this point further.

(i) Refusal of the court to obtain examination of witnesses or disclosure of documents sought by the defence

(i) Refusal to summon witnesses or obtain their enforced attendance

173. In addition, the defence sought to have summoned "ordinary" witnesses whose testimony might have been useful. Thus, the defence asked that the following person be called:

- Mr Putin (then Prime Minister and former President of Russia);
- Mr Sechin (the Chairman of Rosneft, the company which acquired some of Yukos's producing entities), as well as Mr Zubchenko, Mr Kudryashov, Mr Mozhin, Mr Sapronov, Mr Tregub and Mr Yusufov;
- Mr Kudrin (the then Finance Minister, who had previously produced a tax evaluation of the operations of the trading companies allegedly affiliated with Yukos);
- Mr Kulikov, Mr Patrushev, Mr Rushailo, Mr Skuratov, Mr Stepashin and Mr Ustinov (former heads of the Federal Security Service, the Ministry of the Interior and the Prosecutor's Office);
- Mr Bukayev, Mr Zhukov and Mr Pochinok (at the relevant time they had been heads of the Tax Ministry and were engaged in the State control of taxation and transfer pricing);
- Mr Karasev, Mr Sobyanin, Mr Titov and Mr Filipenko (at the relevant time they had been governors of the regions in which Yukos operated).

None of those persons were summoned[1].

174. A number of witnesses were summoned by the court at the request of the defence but failed to appear. According to the applicants, the court did not try to enforce the subpoena and order their forced attendance. This concerned the following witnesses:

- Mr Bogdanchikov (president of Rosneft plc)
- Ms Turchina (a manager at PwC)
- Mr Rieger (former financial controller of the Yukos group)
- Mr Pyatikopov (a representative of the "injured party").

(ii) Refusal to send letters rogatory in respect of foreign witnesses, to obtain their questioning via video-link, or to accept affidavits from them

175. As regards those witnesses who lived abroad and did not want or were unable to come to Russia and testify directly, the defence sought their questioning via video link or through the mechanism of international legal assistance.

176. Thus, Mr Rieger lived in Germany. Given the context of the case, Mr Rieger decided that it was not safe for him to travel to Russia. He indicated that another witness who had given evidence supporting the case for the defence had been summoned for questioning in the GPO's offices, which he regarded as a form of intimidation. Nevertheless, Mr Reiger was prepared to testify via video-link. He wrote a letter to the court, proposing

[1] The applicants did not explain the reason for the court's refusal to summon those persons. The parties are requested to comment on this point.

that arrangements be made through the applicants' lawyers for a video-conference. He indicated that the Khamovnicheskiy District Court had the necessary technical equipment and had previously conducted proceedings through video-conference. However, Judge Danilkin did not reply to that letter and decided not to contact the German authorities in order to organise a video-conference.

177. On 31 March 2009 the defence suggested to the court that it organise questioning by video link of a number of other witnesses who lived abroad: Mr Hunter, Mr Kosciusko-Morizet, Mr Loze and Mr Soublin. However, this was refused. On 1 April and 19 May 2010 the defence asked Judge Danilkin to send a letter of request to foreign courts in order to obtain the questioning of Mr Ivlev, Mr Misamore, Mr Soublin, Mr Sakhnovskiy, Mr Brudno and Mr Dubov. However, the court decided that "there were no legal grounds for granting those motions". On 27 May 2010 the defence asked the court to do the same in respect of Mr Leonovich and Mr Gololobov, who had fled abroad from the Russian authorities, but those motions were rejected; the court stated that it would examine them only if they appeared in person at the trial.

178. On 2 August 2010 the defence asked the court to add to the case file an affidavit by Mr Leonovich, but the court refused.

179. On 27 August 2010 the defence asked the court to add to the case file a copy of the official record of the questioning of Mr Aleksanyan by the GPO in the latter's own criminal case. However, the court refused, stating that the copy of the record had not been officially certified.

180. On 20 September 2010 the defence sought admission to the case-file of "affidavits" from Mr Hunter, Mr Loze, Mr Soublin, Mr Misamore, Ms Carey and Mr Leonovich. However, the court decided that those could not be admitted in evidence.

(iii) Requests for disclosure of evidence by the "injured parties" and third persons

181. The defence introduced several motions seeking to obtain court orders for disclose of documentary evidence in the possession of third persons. In particular, the defence sought to obtain evidence from the "injured parties", namely Rosneft plc (the State-owned company which was the buyer of Yuganskneftegas), Tomskneft and Samaraneftegas. The defence sought to obtain from those companies reports on stocktaking of assets and liabilities for the period 1998-2006, copies of all stock sheets and collation statements (i.e. documents containing an inventory of the property of those companies). The defence sought to demonstrate through those documents that the Yukos subsidiaries had not suffered any losses.

182. The defence further sought a disclosure order in respect of documents from criminal case no. 18-41/03 describing the amounts of oil transferred into the State-controlled system of pipelines.

183. The defence sought disclosure of information related to the oil prices applied in transactions by the subsidiaries of Sibneft and Rosneft in 1998-2003. Those documents were supposed to show that Yukos's practices were not significantly different from those of other oil companies, which also employed "transfer pricing".

184. The defence sought to inspect materials seized during the searches in 2003 within case no. 18/41-03 and searches in the related cases. They indicated that when the applicants' second case had been severed from case no. 18/41-03 the prosecution had failed to include an inventory of all the materials from the original case file. The defence suspected that some of the materials obtained by the GPO as a result of the searches, but not included in the case file in the "second" case, could in effect be "exculpatory" materials.

185. The defence also sought access to and examination of the hard drives seized by the prosecution during the searches, in particular during the search of 26 January 2007. In their words, as follows from the record of inspection of those disks, the investigator used only information from one disk; it was unclear why he did not inspect the other disks. The defence sought access to them, claiming that they might have contained exculpatory information.

186. The defence claimed that it had been unlawful to attach to the case file only the expert reports, without the source materials on which those reports had been based. The defence sought to obtain access to all those source materials.

187. It appears that all those motions for disclosure were rejected[1].

3. Statements by Mr Putin before and during the trial

188. At a press conference on 27 November 2009 Mr Putin, the then Prime Minister of Russia, commented on the applicants' situation and compared them to Al Capone, a famous mobster, and Bernard Madoff, an American fraudster who had been convicted in the US for having mounted a "Ponzi scheme".

189. In September 2010, at a meeting[2] of the so-called "Valday club", a regular gathering of political analysts, Mr Putin allegedly stated to one of his interlocutors that the head of the Yukos security service had killed people, that the first applicant must have known about it and that he (the first applicant) "had blood on his hands". Mr Putin made similar allusions to the applicants' implication in violent crimes in October 2010, during a meeting with foreign investors of VTB Capital[3].

190. On 16 December 2010 in a TV interview Mr Putin was again asked about Mr Khodorkovskiy. In answering the question Mr Putin said that "*the thief should be in jail*", again compared Mr Khodorkovskiy with B. Madoff, and said that Mr Khodorkovskiy's guilt had been proven in court.

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[1] From the applicants' submissions it is unclear what were the reasons for the dismissal of those motions.

[2] It appears that those meetings are generally closed, so that Mr Putin's words cannot be confirmed against the recollections of other participants. Given the format of a meeting, was this a "public statement" or merely an opinion expressed in a private conversation?

[3] Given the status of that meeting, there should be a record thereof. The Government are invited to produce the original record and a translation of the question and of Mr Putin's answer in respect of the applicants. The Government are also invited to explain whether that meeting was open to the press, how many people attended and to what extent that statement was "public".

4. Final phase of the trial

191. On 2 November 2010 the parties made final submissions. Judge Danilkin announced that the judgment would be pronounced on 15 December 2010.

192. According to the defence, although the court secretaries were supposed to prepare trial records on a daily basis, by 2 November 2011 they had finalised only a part of the record from the start of the trial until 17 January 2010. As a result, the judgment did not contain any reference to the trial record. The applicants concluded that the court must have relied in its conclusions overwhelmingly on the written materials which had been presented by the prosecution at the start of the trial.

193. On 15 December 2010 Judge Danilkin informed the parties and the public that pronouncement of the judgment was postponed to 27 December 2010.

F. The judgment of 27 December 2010

194. Judge Danilkin started reading his judgment on 27 December 2010 and ended on 30 December 2010. The applicants were found guilty of embezzlement of oil extracted by the three producing entities and laundering of illicitly acquired profits. The value of property so "embezzled" was calculated on the basis of six years' output of the Yukos oilfields, multiplied by the price of Russian oil (URALS) at the ports of Rotterdam and Amsterdam.

195. The judgment ran to 689 pages of compact text. It contained no headings, no paragraph numbers, and no references to the trial record.

196. According to the applicants, the text of the judgment read out by Judge Danilkin on 27 and 30 December 2010 differed from the written text that the parties received later. They referred to the parts of the judgement which did not appear in the text which was read out by the judge or which appeared in different parts of that judgment.

1. Evidence supporting the prosecution case

197. As follows from the judgment, the court's conclusions relied on a large number of documents. First, the court examined official documents related to companies which were part of the Yukos group: charters of incorporation, minutes of the board meetings, staff service records, payroll lists of various companies, formal orders and directives issued by the applicants within the group, etc.

198. Second, the court relied on a large number of unofficial documents and memos which were prepared within the Yukos group for internal use. Those internal documents described the responsibilities of the leading executives in various fields, the legal issues and risks related to particular modes of operation by the trading companies within the group; they described the structure of oil sales, and summarised the ownership structure within the group, tax issues, etc. Some of those documents disclosed the roles of the first and second applicants in the group's management. The court examined e-mail correspondence between key employees who administered the system of sales; that correspondence described their

functions, the projects they were in charge of, their bonuses, their subordination to a particular Yukos senior executive, etc. The court also had at its disposal correspondence by the lawyers who prepared Yukos for listing on the American stock exchange and described the plans for the sale and the risks related to affiliation. The lawyers also evaluated the potential growth of the tax burden in the event of the disclosure of affiliations, with a view to the company's eventual listing in the US. Some of the memorandums of the lawyers working for Yukos concerned the "promissory notes scheme" and indicated that the transactions with the promissory notes were likely to be declared "sham" and that those responsible for such transactions risked criminal liability under Articles 160, 174 and 201 of the Criminal Code (page 471 of the judgment). Some of those documents were available in paper form and had been countersigned by one or another applicant. A large proportion of those documents, plans, memos and internal correspondence existed only in electronic format and had been obtained from the hard drives of a server seized in the Yukos headquarters (88a, Zhukovka village) by the investigative team during the searches. Some of the servers, according to the judgment, were located in the premises of the law firm "ALM-Feldmans" (page 550 of the judgment; page 595 of the judgment).

199. Third, the court examined sales contracts and shipment orders concerning the oil extracted by the producing entities and sold through the trading companies. In particular, the court examined the contracts between Yukos and Transneft, a State company which controlled the oil pipeline, to track the oil's routes of transportation from the oil wells to the refineries of end-customers.

200. The court compared the internal prices of oil within the group (transfer prices) with the "world market prices", based on the data provided by an international assessment agency Platts and by the Russian assessment agency Kortes. The court also examined the forensic audit report which assessed the "market price of oil".

201. The court examined official reports, tax audits and other documents issued by the governmental bodies which were supposed to oversee Yukos's business operations. The court also scrutinised audit reports prepared by PwC and other audit firms in respect of Yukos plc and the trading companies, and information about custom clearance of Yukos oil provided by the Customs Committee.

202. The court relied on the official correspondence between Yukos and its partners, including minority shareholders. In particular, the court examined correspondence related to the investigations which foreign minority shareholders had conducted in the past with a view to disclosing the trading companies' affiliation with the applicants and prove the latter's abusive conduct.

203. The court relied on other judgments related to the business activities of the Yukos group. In particular, the court relied on:

- judgment of the Meshchanskiy District Court of 16 May 2005 in respect of the two applicants;
- judgment of the Basmanniy District Court of 13 March 2006 in respect of Mr Velichko (who participated in the liquidation or

reorganisation of several trading companies registered in low-tax zones);

- judgment of the Basmanniy District Court of 1 March 2007 in respect of Mr Malakhovskiy and Mr Pereversin;
- judgment of 7 February 2007 by the Kuvshinovskiy Town Court of the Sverdlovsk Region in respect of Mr Ivannikov (former head of the administration of the Lesnoy ZATO);
- judgment of the Miass Town Court of the Chelyabinsk Region of 16 July 2007 in respect of Mr Lubenets (former head of the administration of the Trekhgorniy ZATO);
- judgment of the Basmanniy District Court of 4 April 2008 in respect of Ms Karaseva (director of Forest-Oil, one of the trading companies);
- judgment of the Commercial Court of Moscow of 28 April 2005 in the corporate case of Yukos plc;
- three judgments of the Arbitral Tribunal of the Moscow Chamber of Commerce of 19 September 2006, in the proceedings of Yukos Capital against Yuganskneftegaz, whereby the latter was obliged to repay to the former the amounts of loans received from Yukos Capital in 2004 (those judgments were later quashed by a decision of the Commercial Court of Moscow of 18 May 2007, confirmed on appeal; the decision of the Commercial Court of Moscow was, in turn, quashed by the Dutch courts by a final decision of 25 June 2010 by the Supreme Court of the Netherlands).

204. The court heard a large number of witnesses. In particular, it examined persons who had been directors of the "trading companies" or provided accounting services to them, former managers of Yukos and its subsidiaries, etc. The former employees of Yukos's tax and financial departments explained certain principles underlying the functioning of the system of sales, and described money flows within the group. The court heard Mr Pereversin and Mr Malakhosvkiy on their role in the management of the network of Russian and foreign trading companies. The court heard, as a witness, Mr Khristenko, the Minister of Trade and Industry, and Mr Gref, a former minister, who outlined the situation on the internal oil market at the relevant time and the "transfer pricing" methods used by many oil companies at that time. The court heard the Yukos auditors, who explained that they had not been given full information about the affiliation links between Yukos and certain of the trading companies. Mr Rebgun, the receiver of the company's assets in the bankruptcy proceedings, described the situation with the Yukos-affiliated companies from 2004. Several lawyers from ALM-Feldmans described their role in the registration and maintenance of off-shore companies at the request of employees of the Yukos group.

205. Amongst the witnesses heard by the court the judgment mentioned Mr Petrossyan[1]. However, according to the applicants, that person had never testified orally before the court. The judgment also referred to witness

[1] It is unclear whether this should be Mr or Ms Petrossyan. The applicants are asked to clarify.

testimony by Mr Rudoy, who had not appeared in person and whose written testimony was not read out[1]. According to the applicants, the judgment referred to the testimony of Mr Valdes-Garcia, whereas that evidence had not been examined directly but was only referred to by the prosecutor in his closing statement[2].

206. The court examined records of wiretapping of the phones of Yukos's employees in October–November 2004, namely the exchanges between Mr Gololobov and Ms Bakhmina. From the content of their oral exchanges the court concluded that while in prison the applicants, through their lawyers, continued to give orders aimed at the laundering of profits from the sale of oil.

207. Finally, the court relied on a number of records of the questioning of witnesses by the prosecution in the course of the investigation, or by other courts in other Yukos-related proceedings. In particular, the court examined records of the questioning of Mr Valdes-Garcia, Mr Logachev and Mr Yurov.

2. Evidence supporting the case for the defence, dismissed as irrelevant or unreliable

208. In the judgment the court analysed evidence which supported the case for the defence. Thus, the court analysed witness testimony by Mr Kasyanov, Mr Mirlin, Mr Gilmanov, Mr Anisimov, Ms Lysova, Mr Gerashchenko and Mr Kosciusko-Morizet. The court discarded their testimony as unreliable, self-contradictory, irrelevant, or not based on first-hand experience. The court, in particular, decided that some of the witnesses had financial ties with the applicants, were indebted to them otherwise and therefore could not be trusted (Mr Gilmanov, Mr Anisimov, Mr Kosciusko-Morizet). As to the submissions by Mr Khon, the court dismissed them on the ground that (a) Mr Khon was not a specialist in Russian law, (b) he had not worked in Yukos, (c) he could not have assessed the compliance of the transfer pricing arrangements with Russian law, and (d) his attempt to compare transfer pricing in Yukos and other companies (Lukoil, TNK) was misplaced, since he was not aware of the details of the functioning of those companies. Certain elements in the submissions of witnesses for the defence (Mr Kasyanov, Mr Khon and others) were interpreted by the court as supporting the case for the prosecution.

3. Legal analysis by the court; characterisation of the crimes imputed to the applicants; the sentence

209. The court dismissed the applicants' objection concerning lack of jurisdiction. The court noted that the crimes imputed to the applicants were committed in concert with Mr Ivlev and other lawyers from the ALM Feldmans law office, located in Sechenovskiy Lane in Moscow. In particular, lawyers from ALM Feldmans created and maintained companies

[1] See pages 155, 271, 337-338 and 595-596 of the judgment. The Government are invited to verify whether the testimony from those witnesses was ever examined by the court and, if so, at what moment, and to refer to the relevant parts of the trial record.

[2] The Government are invited to explain whether the court ever examined written submissions by Mr Valdes-Garcia, and, if so, at what moment and in what form.

in Cyprus which were used for laundering of the profits from misappropriated oil. That address was within the territorial jurisdiction of the Khamovnicheskiy Court which, under Article 32 of the CCrP, was therefore competent to hear the entire case.

210. The acts imputed to the applicants were characterised by the court under Article 160 part 3 of the Criminal Code (embezzlement) and Article 174.1 part 3 of the Criminal Code (money laundering, '*legalizatsiya*'). The episode related to the alleged misappropriation of the Tomskneft shares was excluded, due to the expiration of the statutory time-limits. The judgment specified that since the value of the property misappropriated by the applicants exceeded RUB 250,000 they were guilty of "large scale" embezzlement, pursuant to the footnote to Article 158 of the Code. Similarly, since the sums laundered by the applicants exceeded RUB 6 million, the money laundering was also qualified as "large scale money laundering". The court found that the applicants had committed the crimes by an abuse of their position within the companies they had controlled.

211. The judgment stressed that the applicants were not charged with physical theft of the oil extracted and refined by the producing entities. The acts incriminated to them consisted in misappropriation of that oil through a chain of fraudulent deals involving it (page 647 of the judgment). Thus, there was no need to conduct a stocktaking of the oil which the producing entities had allegedly "lost": that loss was not physical but consisted of the loss of profit as a result of the misappropriation of oil profits in the applicants' interests (page 655 of the judgment). Thus, in 2002 the trading companies generated profits of USD 3.932 billion, whereas the producing entities generated during the same period only RUB 4.154 billion.

212. The court decided that the applicants were the leaders of an organised criminal group (Article 35 part 3 of the Criminal Code) which designed and implemented the scheme to misappropriate the oil. The court found that, *de facto*, all important decisions within Yukos were taken by the first applicant, whereas other persons and bodies who had the power to take decisions under the law and in accordance with the charter of incorporation of Yukos and its subsidiaries, had those powers only nominally, and retained independence only in respect of relatively small operations. The fact that both applicants ceased to be senior executives of Yukos in 1999-2001 did not mean that they lost control of the group. Although agreements between Yukos and the producing entities were approved at the general meetings of shareholders, those approvals were obtained through deceit and manipulation. The Public Companies Act required approval of large transactions by a majority of "disinterested shareholders"; however, the applicants obtained approval only through the votes of shareholders who were controlled by them and were thus "interested" in the outcome of the transactions.

213. The court noted as established that where the parties to a commercial transaction had no free will, where they did not acted independently but in the interests of a third party, and where they did not derive benefits from the transaction, those factors were indicative of the sham nature of such a transaction.

214. The court considered that the applicants did not employ the system of "transfer pricing" – they simply forced the producing entities to sell their oil for artificially low prices, which resulted in a reduction of the profits of the producing entities and, in turn, deprived the minority shareholders, including the State itself, of their dividends. The fact that the producing entities received payments for the oil did not mean that there had been no misappropriation; this legal concept also covered situations where misappropriation of property is followed by inadequate compensation for that property (page 652).

215. The court held that it was correct to calculate the cost of the oil misappropriated by the applicants on the basis of the "world market prices". The "domestic price" of the oil in the regions where the oil was extracted did not reflect the real price, since it was calculated on the basis of the prices of other Russian oil companies which also employed transfer pricing mechanisms (page 675 of the judgment). When calculating the value of the oil misappropriated by the applicants, the court used the overall price of the oil, and not the margin which remained in the applicants' hands: according to Ruling no. 51 of the Plenary Supreme Court of Russia of 27 December 2007, where misappropriated property is replaced with another asset of a lower value, the "scale" of misappropriation is calculated on the basis of the value of property.

216. The court dismissed the applicants' arguments that, in the tax proceedings in which the State had recovered unpaid taxes of Yukos, those taxes had been calculated as if all of the oil belonged to Yukos itself. The court decided that previous judgments by the commercial courts concerned only tax matters and did not define the legal title to the oil. The commercial courts in the tax proceedings (which ended with the judgment by the Moscow City Commercial Court of 26 May 2004) took as their starting point the assumption that Yukos was the *de facto* owner of the oil at issue. In its judgment of 21-28 April 2005 the Moscow City Commercial Court defined the owner of an asset as a person who *de facto* exercised all powers of the legal owner in respect of that asset (page 659 of the judgment). In accordance with the position of the Constitutional Court of Russia as expressed in Ruling no. 139-O of 25 July 2001, the tax authorities were entitled to establish the real owner of the property which was an object of a transaction on the basis of *de facto* relations between the parties and irrespective of what was written in the contracts between them (page 660 of the judgment). While the commercial courts established that Yukos was a *de facto* owner of the oil and benefited from its sales through the trading companies, the commercial courts did not find that Yukos was a *de jure* owner of that oil. Thus, the commercial courts' conclusions in the previous proceedings did not contradict the court's conclusions in the current proceedings as to the applicants' guilt with regard to "misappropriation" of the oil which belonged to the producing entities.

217. The court took note of over sixty judgments by the commercial courts confirming the validity of the general agreements between Yukos and the producing entities. However, the commercial courts at the relevant time had based their findings on the presumption that the parties to those agreements were independent and had acted in good faith. The "sham" character of those agreements became evident only as a result of an

investigation which discovered the links of affiliation and the lack of independence of the parties involved.

218. In the opinion of the court, there was no overlapping between the charges the applicants faced in the first and second trials. In 2005 the applicants were convicted for tax evasion related to the operation of trading companies in the low-tax zones in 1999-2000. In the second trial the applicants stood accused of misappropriation of the oil belonging to the producing entities in the period 1998-2003. The objects of the crime of "tax evasion" and of the crime of "misappropriation" were distinct, as were the periods concerned. The court noted that Article 174.1 of the Criminal Code provided that the crime of money laundering could not be committed in respect of money acquired as a result of tax evasion – a crime punishable under Articles 198, 199.1 and 199.2 of the Criminal Code. However, in the applicants' case the "money laundering" concerned not the sums of unpaid taxes but the "misappropriated" assets. Thus, the applicants first "misappropriated" the oil by concentrating profits from its sale on the trading companies' accounts, and then committed the crime of "tax evasion", since the trading companies located in Lesnoy ZATO (the low-tax zone) claimed and obtained tax cuts unlawfully. "Tax evasion" was therefore a form of maximising the profits from "misappropriation". Consequently, the "laundering" of money accumulated on the accounts of the trading companies concerned not the proceeds of the crime of "tax evasion" but the proceeds of "misappropriation".

219. The court disagreed with the applicants, who claimed that the group's inner structure had been transparent to the public and the authorities. The court established that in previous court proceedings the applicants never acknowledged their affiliation with the trading companies, such as Fargoil, Mitra and others, and that they did not concede those facts in their relations with the Russian authorities. As to the consolidated financial reporting for foreign investors, such reports did not contain an exhaustive and clear list of affiliated companies, their operations and the profits accumulated by them. All publications or statements by the company concerning Yukos's affiliation links with the trading companies were half-hearted and evasive, and at no point did Yukos disclose a complete and detailed breakdown of internal organisation within the group. That information was not given to the shareholders; consolidated reports prepared under the GAAP rules were always published in English, while the shareholders had access to a Russian-language version of the reports. Even the auditors from PwC did not have a full picture of what was happening within the group, let alone individual Russian shareholders.

220. The court accepted the applicants' contention that part of the profits from the sale of oil was returned to Yukos. However, even though the applicants maintained operations of the producing entities, reinvested in the equipment and even increased the output of the producing entities, they did so only to maximise their own profits and the capitalisation of Yukos. The applicants decided what to do with the profits and where to invest them at their own will, without taking into account the opinions and interests of other shareholders in the producing entities. Similarly, the buyback of the shares in the producing entities and in Yukos itself was decided by the applicants themselves, without any involvement by the minority

shareholders. Those deals served the applicant's interests alone. The reinvestment of USD 2.6 billion in the producing entities in 2003, in the form of the loans by Yukos Capital, served only the purpose of securing control over the producing entities in the capacity of their largest creditor. Although certain sums were reinvested in the producing entities, this was not done on a gratuitous basis but in the form of buying promissory notes, providing loans, i.e. on the reciprocal basis.

221. Both applicants were sentenced to 14 years' imprisonment, which included the remaining part of the sentence the applicants were serving under the judgment of 16 May 2005[1].

4. Determination of the civil claims against the applicants

222. Within the criminal cases several private persons, companies and a State agency introduced civil claims against the applicants. They included Mr Belokrylov and Mr Demchenko, Rosneft plc, Tomskneft plc, Samaraneftegas plc, Sandheights Ltd. and the Federal Property Agency.

223. The court decided that the question of civil damages was not ready for decision and relinquished jurisdiction in favour of a civil court in this respect.

G. Statements by Ms Vassilyeva, Mr Kravchenko and others; the applicants' attempt to initiate an investigation

224. On 26 December 2010 the web-magazine Gazeta.ru published information to the effect that in the morning of 25 December 2010 plain-clothes security officers had escorted Judge Danilkin from his home to the Moscow City Court. He had allegedly been warned not to leave his house.

225. On 14 February 2011 Ms Vassilyeva, an assistant to Judge Danilkin and later the press-officer of the Khamovnicheskiy District Court gave an interview to Novaya Gazeta, an opposition newspaper. In the interview she stated that the judgment in the second applicants' case had been written not by Judge Danilkin personally, but by judges of the City Court. She confirmed that on 25 December 2010 Judge Danilkin had been taken to the Moscow City Court and later arrived at the Khamovnicheskiy District Court, where he had been seen by other employees. She also said:

> "... [The] entire judicial community understands very well that there has been an 'order' for this case, for this trial ... I know for a fact that the [text of the] judgment was brought [to the Khamovnicheskiy District Court] from the Moscow City Court, of this I am sure..."

226. She stated that throughout the trial Judge Danilkin was constantly under the control of the Moscow City Court and received instructions from it. In her words, the delay in the announcement of the verdict was in part due to Mr Putin's comments of 16 December 2010. She implied that Judge Danilkin had first prepared his own judgment, but had been later forced to read out another text, which had been prepared elsewhere, and that some parts of that other judgment had been delivered to the Khamovnicheskiy District Court while he was reading out the beginning of the judgment.

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[1] The parties are invited to explain when the applicants' first prison term ended, if taken in isolation, and how the date of their release after the second conviction was calculated.

227. In April 2011 Mr Kravchenko, another former employee of the Khamovnicheskiy District Court, confirmed Ms Vassilyeva's words. In particular, he said that Judge Danilkin, referring to the judges from the upper court, said:

> "Whatever they say, that's how it will be. It isn't really my decision."

Mr Kravchenko stated that Judge Danilkin had consulted with the Moscow City Court whenever he faced difficulties in handling the trial.

228. According to the applicants, a visitor to the court, Ms S.D. overheard a telephone conversation involving one of the prosecutors, who had allegedly said the following:

> "Now the lawyers will rattle on [to justify] their fees, Khodorkovskiy will blabber [his part], but the judgment is not yet ready, it has not been brought from the Moscow City Court yet".

229. In May 2011 the applicants' lawyers lodged a formal request for a criminal investigation into the allegations by Ms Vassilyeva, Mr Kravchenko and others. In the opinion of the defence lawyers, if the facts disclosed by the two former employees of the District Court were true, the situation amounted to a crime. They supported their request with a detailed analysis of the relevant parts of the judgment which were mutually exclusive, used different terminology, were incoherent with Judge Danilkin's other procedural decisions, etc. In their opinion, all of that suggested that Judge Danilkin was not the author of the judgment or at least that he was not the only author thereof[1].

H. Appeal proceedings

1. Preparation for the appeal hearing

230. On 31 December 2010 the applicants' lawyers lodged the first ("short") appeal against the judgment. In the following months this was supplemented by a "long" brief of appeal which contained detailed arguments by the defence.

231. According to the defence, by the end of the trial the case materials were contained in 275 volumes, of which 188 volumes were the materials of the pre-trial investigation and the rest were the materials added throughout the trial (trial record, motions, procedural rulings, etc.).

232. The "final version" of the trial record was made available to the parties quite late after the pronouncement of the judgment, namely on 16 March 2012[2]. The defence also introduced a 1,060-page long memo which contained corrections to the trial record[3]. Judge Danilkin dismissed most of the objections by the defence as unsubstantiated[4].

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[1] It is unclear whether any proceedings were initiated and what was the outcome of them.

[2] The applicants referred to the "final version". Does this mean that prior to that date the defence had access to some "preliminary" version of the trial record or to some parts of it?

[3] The applicants are invited to indicate when they received the full trial record and when they submitted their written objections to it. Was it possible for the defence to obtain access to the trial record during the trial and make objections to it before the pronouncement of the judgment?

[4] The Government are invited to specify what how much time it took Judge Danilkin to examine the objections and what were the reasons for dismissing the objections of the

233. Together with his brief, the second applicant tried to introduce new evidence before the court of appeal, namely an affidavit from an American lawyer who, at request of the applicants, had investigated the question of withdrawal of the audit report by PwC. However, the court of appeal refused to consider that evidence.

2. Appeal hearing and the findings of the court of appeal

234. The judicial bench of the Moscow City Court was composed of three judges: Mr Usov (the President), Ms Arychkina and Mr Monekin (judges). Both applicants, as well as their defence lawyers, appeared before the court in person.

235. The appeal hearing was completed on the same day it started. On 24 May 2011 the Moscow City Court upheld the judgment of 27 December 2010, while reducing the sentence to 13 years' imprisonment.

236. The judgment of the court of appeal run to 70 pages and contained a brief description of the factual findings of the lower court. The court of appeal confirmed the account of the events given by the lower court and addressed the main arguments of the defence.

(a) Conclusions of the court of appeal on the substance of the case

237. According to the court of appeal, although the producing entities had been receiving payments for their oil, those payments were much lower that the prices which they would otherwise have received if they had sold the oil independently. Although on the face of it the "general agreements" and the "auctions" appeared valid, and even though the trading companies shipped the oil to the end-customers, their will was distorted by unlawful and deceitful acts by the applicants, who coerced them into signing those agreements and accepting the results of the auctions. The fact that the producing entities, who were the civil plaintiffs in those proceedings, only sought compensation for their lost profits and not for all of the oil which went through the trading companies did not rule out the fact that all of the oil was misappropriated by the applicants.

238. The court of appeal acknowledged that the validity of the general agreements had been confirmed by final judgments of the commercial courts. However, the commercial courts had acted on the assumption that the parties to those agreements had been acting freely and independently, which had not been the case. In addition, in those proceedings the interests of the producing entities were represented by lawyers from Yukos-Moskva, who misinformed the commercial courts about the real nature of the relationships between Yukos and its producing entities.

239. The court of appeal found that it had been impossible to establish a domestic "market price" of oil in the respective Russian regions (page 55 of the appeal judgment) because at the relevant period almost all of the oil had been extracted by entities which were part of vertically integrated companies. Such companies applied "transfer pricing" and thus fixed the

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defence. Were the applicants' lawyers allowed to audio-record the course of the hearing? Did the court make its own audio-recording? If the objections of the defence were based on the audio-records, what other source, besides the judges' own recollection and the minutes typed by the court secretaries, was available to the judge?

price of oil at their discretion. Such a practice run counter to the interests of the State and the minority shareholders.

240. The court of appeal held that earlier judgments by the commercial courts in the tax proceedings involving Yukos did not contradict the findings of the Meshchanskiy District Court in the criminal proceedings against the applicants. The commercial courts imputed taxes to Yukos on the assumption that Yukos was a *de facto* owner of the oil, derived profits from selling that oil and was therefore obliged to pay taxes. However, the commercial courts never said that Yukos was *de jure* the owner of the oil. The oil was the property of the producing entities and was misappropriated by the applicants.

241. The court of appeal disagreed with the applicants that they had been convicted twice for the same act. Within the first case the applicants were convicted of tax evasion, whereas in the second case they stood trial for embezzlement.

242. The court of appeal upheld the findings of the lower court as to the role of the applicants in the "organised group" which participated in the embezzlement of oil.

243. The court of appeal also dismissed the applicants' allegations of political motivation behind the prosecution. According to the court of appeal, the trial in the applicants' case was open and based on the principle of adversarial proceedings and equality of arms. The defence had enjoyed procedural rights, and was able to introduce motions and examine witnesses. The statements by the applicants' lawyers about the political underpinning of the prosecution were unfounded. The charges against the applicants were related to their business activities and did not concern any political party. In any event, a political status of a person did not give him immunity from answering criminal charges (page 60 of the judgment of the court of appeal).

244. On page 21 of its judgment the court of appeal mentioned that two trading companies - Ratibor and Fargoil – were represented in Russia by lawyers from ALM Feldmans (page 21). On page 40 the court of appeal repeated that ALM Feldmans acted on behalf of foreign trading companies executing orders from Yukos employees. The court of appeal also noted that within an agreement on provision of legal services, lawyers from ALM Feldmans organised the transfer of billions of roubles from Ratibor to Dansley Limited, in the guise of "dividends".

(b) Conclusions of the court of appeal on procedural matters

245. The court of appeal then turned to the procedural objections raised by the defence (pp. 61–67 of the judgment of the court of appeal). It held that in bringing the second criminal case against the applicants the GPO had respected all necessary procedural requirements, and that that issue had been sufficiently addressed by the lower court. The applicants had been sufficiently informed about the accusations against them and, as followed from their own submissions, they were well aware of all the necessary details of the case. The bill of indictment contained the information necessary to understand the factual grounds of the accusations. The trial court had examined the case within the scope outlined in the bill of indictment.

246. The territorial jurisdiction of the District Court had been defined in accordance with Articles 31-33 of the CCrP. In particular, the District Court accepted jurisdiction to try the applicants' case with reference to the "most serious crime" imputed to the applicants, namely that provided by Article 174-1 p. 4 of the Criminal Code. The bill of indictment referred to the acts which were imputed to the applicants and which had been committed on the territory under the jurisdiction of the Khamovnicheskiy District Court.

247. When the second case was severed from the first criminal investigation, the investigator attached to the new case file certain documents from the first case, either original documents or duly certified photocopies. With regard to expert examinations conducted at the request of the GPO, the defence had had access to the relevant decisions of the investigator, to the report themselves and had been able to "lodge motions".

248. The defence had full access to the materials of the case; the case file contained their written statements to that end. As to the applicants' allegations that they had not received access to some of the materials on which the prosecution and the court had relied, the court of appeal found that allegation "unfounded".

249. The court of appeal rejected the applicants' allegation that the lower court's approach to the taking and examination of evidence had been one-sided. The trial court had given sufficient grounds in explaining why it considered some evidence reliable and some not. The essence of the evidence examined at the trial was reflected accurately in the judgment. The first-instance court properly examined the applicants' arguments concerning the inadmissibility of certain evidence for the prosecution, namely the documents obtained from the searches in the premises of ALM Feldmans, PwC, translations of documents, and reports on examination of and extraction of information from the electronic disks. Evidence relied on by the GPO was properly obtained, recorded and produced to the court. Expert reports were commissioned in accordance with the procedural rules, the qualification of the experts was beyond any doubt, and their objectivity was not questioned.

250. The court of appeal found that the trial court had read out written testimony by several witnesses (Mr Rudoy, Ms Kolupayeva, Mr Yurov, Mr Petrossyan and Mr Valdes-Garcia) but that this had been in accordance with the law. In particular, the written testimony of Mr Petrossyan who lived abroad was read out at his own request under Article 281 part 4 (2) of the CCrP. Occasionally the judgments referred to "oral submissions" by some of those witnesses, whereas the court relied only on their written testimony, but that was a minor mistake. The essential fact was that the testimony of those persons had been examined at the trial, in one form or another.

251. The trial court had examined and assessed the evidence produced by the defence. The court of appeal dismissed the arguments that the trial court had misinterpreted the testimony of Mr Kasyanov, Mr Gref and Mr Khristenko.

252. The court of appeal held that in the proceedings before the trial court the defence had enjoyed equality of arms with the prosecution and that the judge was impartial and had ensured that the defence was able to fully

realise their procedural rights. The trial court had accepted reasonable and lawful requests by the defence and dismissed, after careful examination, all those which were unjustified or not based in law. The court of appeal further, in a summary manner, dismissed all the complaints by the defence concerning the defence motions rejected by Judge Danilkin during the trial, having found that the decisions of Judge Danilkin in this respect were "convincing and supported by the materials of the case", and that the applicants' defence rights had not been hindered in any way (page 65 of the judgment of the court of appeal). The defence had been given sufficient time to study the trial record and to formulate their objections. The parties had been given an opportunity to make their final pleadings, and the judgment had been rendered in accordance with the procedure provided by law. The law did not prevent the trial court from starting to write the judgment before the trial record was finalised. The trial court's reliance on the previous judgments in connected cases was legitimate; as to the existence of several parallel investigations, the court of appeal noted that severing cases was within the competence of the prosecution bodies and not the court.

253. Finally, the court examined matters related to the detention of the applicants on remand and the legal characterisation of the acts imputed to them. In particular, the court noted that during the pleadings the prosecution had dropped charges related to several individual episodes of embezzlement of oil; it appears that the prosecution wished to exclude episodes where there was uncertainty about the amounts of oil embezzled or where the method of calculation of the price of oil differed from the usual method proposed for other episodes. The court also stated that the indication in the judgment that the applicants acted "through their lawyers" was to be excluded, since the judgment was supposed to deal only with the applicants' crimes and not those of anyone else. The court also applied the new law which modified sentencing principles to the benefit of the accused, changed the legal characterisation of the crimes imputed to the applicants and reduced the overall sentence to 13 years of imprisonment for both applicants.

I. International reactions to the judgment

254. According to the applicants, a large number of foreign political leaders and high-placed State officials expressed their concern about the fairness of the second trial and improper motivation behind the applicants' prosecution. Those included the US Secretary of State, Ms Clinton, the UK Foreign Secretary, Mr Hague, a French Foreign Ministry official, the German Chancellor, Ms Merkel, the German Foreign Minister, Mr Westerwelle, the EU High Representative Catherine Ashton and others. On 24 May 2011 Amnesty International, an international human rights NGO, declared the applicants "prisoners of conscience".

255. The applicants produced a large number of documents, official statements, press publications, declarations by foreign governments, intergovernmental bodies and NGOs in which their case was labelled as an instance of "political prosecution".

COMPLAINTS

256. Under Article 6 §§ 1, 2 and 3 (a), (b) and (d) of the Convention the applicants complain that their trial as a whole was unfair. In particular, they complain that:

- the trial court did not have territorial jurisdiction to hear the case;
- the court was not impartial and independent, as demonstrated by the statements by Ms Vassilyeva and others;
- the principle of presumption of innocence was prejudiced by the public statements of Mr Putin, whereby the applicants were presented as crooks and murderers;
- the applicants' conviction was based on judgments in other related cases in which the applicants did not participate;
- the applicants were not informed promptly of the nature and cause of the accusations against them; in particular, they were not formally charged until February 2007, whereas the investigation concerning money laundering had started in 2004;
- the taking and examination of evidence was unfair and contrary to the principle of equality of arms; in particular, the court permitted the prosecution to rely on their expert evidence but dismissed all but one request by the defence to allow their experts to testify or present their written opinions; the applicants were unable to cross-examine most of the expert witnesses for the prosecution, the court refused to exclude inadmissible evidence for the prosecution, and in particular evidence obtained in breach of lawyer-client confidentiality; the court refused to add exculpatory material to the case file or to order disclosure of exculpatory material or "source materials" in general; the court failed to summon witnesses for the defence, to secure forced attendance of a number of witnesses or to obtain their questioning by video-conference or through letters rogatory;
- the applicants did not have sufficient time and facilities for the preparation of their defence.

257. Under Article 7 the applicants complain that they were subjected to extensive and novel interpretation of the criminal law and unlawful imposition of a criminal penalty.

258. Under Article 8 the applicants complain that their detention in the remand prisons (SIZO) in Chita and Moscow was unlawful and adversely affected their family lives. The applicants alleged that the authorities designated Chita as a place for investigation arbitrarily and deliberately, in order to separate the applicants from their families and friends.

259. Under Article 4 of Protocol No. 7 the applicants complain that their second trial breached the rule against double jeopardy.

260. Under Article 18 of the Convention the applicants complain that their rights and freedoms were restricted "for other reasons" than those permitted by the Convention.

QUESTIONS TO THE PARTIES

The parties are invited to address the questions below. In addition, they are invited to comment on the specific points raised in the footnotes to the facts of the cases as prepared by the Registry. If the facts of the cases contain any inaccuracies or important lacunas, the parties are invited to comment on these too, in the light of the questions formulated by the Court.

In answering questions and adressing points raised in the footnotes, the parties are invited to refer to the relevant decisions of the domestic courts, indicate the corresponding pages in the trial record and, if necessary, quote from the domestic decisions, as well as from the parties' procedural motions and appeals. Any handwritten document must be accurately transcribed. Quotations from the domestic decisions must refer to the date of the decision, clearly indicate the subject-matter of the decision and be as concise as possible. It is the duty of the parties to verify the accuracy of the quotations made by another party.

A. Splitting the criminal investigations into several cases; belated charging of the applicants

1. Was there a breach of Article 6 §§ 1 and 3 (a) on account of the fact that the charges in case no. 18/325556-04 were formally brought against the applicants only in 2007? What was the reason for not bringing accusations against the applicants earlier? To what extent was the applicants' second case based on the materials collected during the original investigation, which led to their conviction for fraud and tax evasion in 2005? Did the belated bringing of charges disclose elements of "bad faith" on the part of the authorities?

2. What was the subject-matter of cases nos. 18/432766-07, 18/325556-04 and no. 18/41-03 (the Government are invited to describe briefly the essence of each case and the legal provisions invoked)? Why were they investigated separately, and why was case no. 18/432766-07 investigated in Chita, although the events incriminated to the applicants took place essentially in Moscow? What is the current status of each case (closed, under investigation, etc.)?

3. Had the "second case" against the applicants been tried at the same time as their "first case", how would this have affected the calculation of the overall final sentence, in accordance with the rules then applicable? Was there a breach of Article 7 of the Convention on this account?

B. Jurisdiction over the case within the second trial

4. Were the applicants tried by a "tribunal established by law", as required by Article 6 § 1 of the Convention? In particular, did the Khamovnicheskiy District Court have territorial jurisdiction to examine the applicants' second criminal case? As follows from Article 32 of the CCrP, a criminal case must be heard in the place "where the crime has been

committed". There are alternative rules which provide that where several crimes were committed in different places the case should be tried by the court in the place "where most of the crimes were committed" or "where the most serious of them was committed". Which rule was applied in the present cases and how do the courts decide what amounts to "most of the crimes" or to "the most serious crime"?

5. The accusations against the applicants related to acts committed by them in their capacity as *de jure* and *de facto* bosses of Yukos. Where were those crimes committed – at the Yukos headquarters or elsewhere? Which particular acts (the Government are invited to refer to the relevant parts of the bill of indictment) imputed to the applicants were committed on the territory under the jurisdiction of the Khamovnicheskiy District Court? Where these acts committed by the applicants themselves or by any of the "unidentified co-perpetrators"? Did those acts amount to a separate count (episode, head) in the accusations or they were part of a chain of operations which have been characterised, in their entirety, as "embezzlement" or "money laundering"? Why were the cases closely related to that under examination (namely the cases of Mr Pereverzin, Mr Malakhovskiy, Mr Aleksanyan, and the applicants' first case) examined by other courts, in particular the Basmanniy District Court, the Simonovskiy District Court and the Meshchanskiy District Court in Moscow?

C. Independence and impartiality of the court

6. Was the court in the applicants' second case "independent and impartial", as required by Article 6 § 1 of the Convention? The Government are invited to comment, in particular, on the applicants' allegation that Judge Danilkin did not write the judgment himself but received the text from the Moscow City Court. Was any sort of inquiry conducted into the statements made by Ms Vassilyeva and others to the press, and, if so, what exactly has been done to verify the truthfulness or otherwise of those allegations? More generally, is there any obligation on the State under the Convention to refute such allegations and, if so, what does that obligation consist of?

D. Presumption of innocence

7. The judgment in the applicants' case extensively cited from judicial findings in other cases related to Yukos employees and partners, such as Mr Pereverzin, Mr Malakhovskiy, Ms Karaseva, Mr Lubenets, Mr Ivannikov and Mr Velichko. What was the status of the courts' findings in those other cases? Did they constitute *res judicata*? In other words, did the Khamovnicheskiy District Court consider that those facts could be taken as "proven" for the purposes of the applicants' case and that they did not need to be proven in an ordinary manner at the applicants' second trial? If not, why did the court need to cite those other judgments at all? Was that situation compatible with the principle of "presumption of innocence" established in Article 6 § 2 of the Convention? How did the reliance on

those judgments affect the overall fairness of the proceedings under Article 6 § 1 of the Convention?

8. According to the applicants, Mr Putin on four occasions made public statements which breached the applicants' presumption of innocence. Did those statements relate to the applicants' second trial, and, if so, where they compatible with the applicants' rights under Article 6 § 2 of the Convention? The Government are particularly invited to comment on a phrase allegedly uttered by Mr Putin in October 2010 at a meeting with foreign investors in VTB Capital, when he implied that the applicants were guilty of a murder[1].

E. Time and facilities for the preparation of the defence; contacts with the lawyers

9. Did the applicants have adequate time and facilities to prepare for their trial, as required by Article 6 § 3 (b) of the Convention?

10. How many pages of prosecution materials were the applicants required to study (a) before; (b) during the trial; and (c) during the appeal proceedings, and how much time, at each stage, were they given?

11. While working with the case file, did the applicants have a possibility to:

(a) copy parts of the prosecution file;

(b) make handwritten notes on the case, and show them to the defence lawyers;

(c) keep the notes and copies of documents in their cells; and,

(d) bring those copies and notes to the courtroom and use them at the trial?

12. Did the applicants' lawyers have the possibility to copy parts of the case file and take them to their office, or bring copies to the meetings with their clients? Did the applicants' lawyers have the possibility to show the applicants drafts of procedural documents or documentary evidence they had obtained? Did the applicants' lawyers have the possibility to study the case file separately from the applicants (i.e. on different days and without the applicants being present), or was it possible for the defence to split up, so that one lawyer worked with one volume while another worked, in parallel, with another volume?

13. More generally, what other form opportunity to work with the case file was accessible to the applicants, other than studying the original copy in a meeting room in the presence of an investigator, where a confidential exchange could only take place on condition that the original copy of the case file was removed?

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[1] Please note that the complaint about prejudicial remarks by Mr Putin was made by the applicants before the submission of the joint comprehensive application form; see, in particular, the request for Rule 40, dated 2 March 2011.

14. Were the applicants hindered in the preparation of their appeal, in particular in view of their allegation that they received access to the full copy of the trial record only on 16 March 2010? The applicants also complained about inaccuracies in the trial record; were those inaccuracies such as to prevent the applicants from challenging their conviction before the court of appeal? If the trial record indeed contained serious inaccuracies, the applicants are invited to refer to them and to give the "correct" version. The applicants are invited to refer only to those inaccuracies which seriously distorted the witnesses' testimony and could have influenced the material conclusions of the court. The applicants are asked not to refer to minor omissions or errors in the trial record which could not have influenced the outcome of the trial.

15. Did the applicants have the possibility to have confidential contacts with their lawyers during the investigation, as required by Article 6 § 3 (c) of the Convention? In particular, the Government are invited to comment on the episode in February 2007 when the applicants' lawyers' documents were examined in a Moscow airport. Why did the airport security order that search? How many people from the airport security team participated in the search, and who they were? What sort of "privileged material" did the lawyers have in their possession at that moment, and could that search have influenced the further proceedings? Did a domestic legal remedy exist to complain about that search and when did the applicants complain about this episode before the Court for the first time?

16. Did the applicants have the possibility to have confidential contacts with their lawyers during the trial, in view of the conditions in which they were detained in the courtroom? What other opportunities for confidential contact between the applicants and their lawyers existed (a) during the hearing; (b) during the breaks in the hearings; (c) on the days when there were no hearings; or (d) in the mornings before the start of the hearing, or in the evenings after the hearing? In view of the conditions in which the defence lawyers had to communicate with the applicants, was the applicants' right to legal assistance under Article 6 § 3 (c) respected?

F. Handling of evidence

17. Was the way in which the evidence for and against the applicants was taken and examined compatible with Article 6 § 1 of the Convention? In particular, did the applicants enjoy equality of arms in this respect, were the proceedings adversarial and were the rights of the defence, as provided by Article 6 § 3 (b), (c) and (d) of the Convention, respected?

18. Was it permissible under Article 6 §§ 1 and 3 (c) and (d) to use in evidence against the applicants documents seized during the searches in the offices of Mr Drel and other lawyers who represented them in the first and/or second criminal cases? What particular documents seized from the applicants' lawyers were used in the second trial, and what importance did they have in those proceedings? Who else, besides Mr Drel from the law

office of ALM Feldmans, could be considered as the applicants' "lawyer" within the meaning of Article 6 § 3 (c) for the purposes of the present cases? The Government are requested to produce copies of the search warrants, and to explain why those search warrants were issued by the prosecution and not by the court.

19. It appears that the defence was unable to examine at the trial the audio recordings of telephone conversations between Ms Bakhmina and Mr Gololobov, Yukos in-house lawyers, and that only the transcripts of those recordings were shown to the defence. What sort of information did those transcripts contain and how did it affect the conclusions of the trial court? Did those transcripts cover all of the intercepted communications, or they contain only the extracts necessary, in the view of the prosecution, for the second trial? In the second scenario, who had power to decide what part of the transcripts should be shown to the defence and examined at the trial – the prosecution or the judge? Did the defence have any possibility of examining the records and/or the remaining parts of the transcripts? Why were the original audio-recording and the transcripts in their integrity not shown to the defence? Is that situation compatible with the principle of "equality of arms" and "adversarial proceedings", enshrined in Article 6 § 1 of the Convention?

20. The defence complained that although the prosecution had full access to the documents obtained within other criminal investigations concerning Yukos activities, namely evidence obtained during the searches, the defence had access only to the documents which the prosecution selected and attached to the file which was submitted to the Khamovnicheskiy District Court within the applicants' second case. Similarly, the applicants stated that the defence had no access to important "source materials", that is, materials given to the prosecution experts for analysis and hard drives from the computers seized during the searches. The prosecution submitted to the the court only expert reports as such and written transcripts from the hard drives, but not the "source materials" and hard drives as such. If this is true, is that situation compatible with the principles of "equality of arms" and "adversarial proceedings" and, more generally, with the general requirement of "fair" proceedings under Article 6 § 1 of the Convention? In particular, did the transcripts from the electronic files contain all of the information contained therein, or only extracts selected by the prosecution?

21. Was the defence on an equal footing with the prosecution in respect of the expert evidence, and did the applicants have the right to produce expert evidence in their defence, as provided by Article 6 §§ 1 and 3 (d) of the Convention?

22. Concerning the expert evidence produced by the prosecution and admitted by the court for examination at the trial, what was the main conclusion of the expert reports, in particular the reports of October 2000, June 2004, February-March 2006, January and February 2007 (for more details, see the "Facts" part)? What particular factual allegation did each of those reports address?

23. Did the defence have a chance to challenge those reports, for example by (a) participating in the preparation of those reports at the pre-trial stage; (b) examining the source materials and questioning the experts; (c) providing counter-opinions by experts for the defence? More generally, was the defence entitled under Russian law to collect and submit to the court "expert reports" or "written opinions of the specialists"? Would the written opinion of a professional in a particular field, obtained by the defence, be regarded as "admissible evidence" under Russian law and under what conditions?

24. What were the court's reasons for not summoning the expert witnesses for the prosecution whose attendance was sought by the defence, in particular, Mr Ivanov, Mr Kuvaldin, Mr Melnikov, Mr Shepelev, Mr Yeloyan, Mr Kupriyanov, Mr Chernikov and Mr Migal?

25. With regard to the expert evidence for the defence, what was the reasons for the court's refusal to admit such evidence and either to hear oral submissions by the "specialists" or to attach their written reports to the materials of the case? In particular, why did the court refused to hear Mr Dages, Mr Lopashenko, Mr Delyagin, Mr Romanelli, Mr Hardin, Mr Savitskiy and Ms Rossinskaya? Why did court hear Mr Haun but refuse to attach his written report? Is it true that Mr Haun was the only "specialist" whose appearance in court was not opposed by the prosecution? The applicants are invited to explain why the defence sought the appearance of those expert witnesses ("specialists") and what particular point each of them was expected to address.

26. What was the reason for not admitting in evidence "documents" submitted by the defence in support of their arguments (in particular RSBU financial reporting of Yukos subsidiaries as certified by PwC; Yukos's US GAAP financial statements, Yukos documentation describing production and sales processes and capital expenditures, legal explanations of Yukos's international corporate structure, reports by the State-appointed bankruptcy receiver for Yukos, copies of materials from the bankruptcy case, examined by the Commercial Court of Moscow in respect of Yukos)? Was the court's refusal to admit this evidence related to the improper form in which it was submitted, the manner in which it had been obtained by the defence or any other procedural defect, or rather to the substance of those documents? The Government are invited to refer, in respect of each document, to the wording of the relevant rulings by the trial court whereby it refused to attach those documents to the case file.

27. The applicants requested the court to obtain appearance in the court of Mr Putin and several other Government officials (in particular Mr Sechin, Mr Kudrin, Mr Ustinov, Mr Kulikov, Mr Patrushev, Mr Rushailo, Mr Skuratov, Mr Stepashin, Mr Bukayev, Mr Zhukov, Mr Pochinok, Mr Karasev, Mr Sobyanin, Mr Titov and Mr Filipenko), as well as a number of other witnesses (Mr Zubchenko, Mr Kudryashov, Mr Mozhin, Mr Sapronov, Mr Tregub and Mr Yusufov). However, the court refused to

summon any of them. The Government are invited to explain why the court refused to summon those persons as witnesses and whether this was compatible with the requirements of Article 6 § 3 (d) of the Convention. The applicants are invited to explain, briefly, what testimony those persons were expected to give, and how it was related to the case for the defence.

28. Did the court order the forced attendance of persons who were summoned at the request of the defence but who did not appear (Mr Bogdanchikov, Mr Rieger, Mr Pyatikopov and Ms Turchina)? What specific measures did the court or the authorities undertake in order to secure the attendance of those witnesses?

29. With regard to witnesses living abroad, it appears that the defence sought to obtain information from them. Why did the court refuse to question those witnesses via video-conference link, or to send letter rogatory to foreign courts asking that they be questioned? What was the reason for not adducing to the case files the written "affidavits" from some of those witnesses, collected and produced by the defence? Is it true that under Russian law the courts cannot accept "affidavits", i.e. written sworn statements collected by the defence, but may, at the same time, accept written records of the questioning of witnesses by the prosecuting authorities? Does Russian law accept questioning of a witness living abroad via video-conference system, and, if not, what are the reasons and the legal basis for not accepting such a form of questioning? The applicants are requested to explain what particular points relevant for the defence those witnesses would have addressed, if questioned.

30. According to the applicants, at the trial the prosecutors read out records of the questioning of 42 witnesses. Article 281 (3) of the CCrP permits the reading out of a record ("protocol") of the questioning of a witness who testifies orally before the court where "significant" inconsistencies exist between that witness's words during his or her oral examination and the testimony recorded earlier by the investigator. Does it mean that forty-two witnesses at the trial gave evidence which was "significantly" different from their recorded testimony? How does that fact affect the overall fairness of the proceedings?

31. What was the reason for not ordering the disclosure of documents which were in the possession of third parties and which the defence sought to obtain? This question concerns, in particular, an inventory of property of Yukos subsidiaries, information on oil prices applied by Rosneft and Sibneft, and the full inventory of documents found by the GPO as a result of searches in 2003, as well as the content of those documents? What particular point did the defence try to prove with those documents? How did the court's refusal affect the overall fairness of the proceedings?

G. Essence of the accusations against the applicants

32. Was the applicants' conviction for embezzlement and money laundering based on a novel, extensive and/or retrospective interpretation of the Criminal Code, and thus in breach of Article 7 of the Convention?

33. What particular acts were characterised as "misappropriation" and "money laundering" (*legalizatsiya*) in the prosecution case? Would it be correct to say that, according to the prosecution, "misappropriation" consisted of forcing producing entities to sell oil "below the market price", in breach of the rules of corporate law, whereas all other transactions (related to chanelling the oil sales through a network of Russian and foreign trading companies, withdrawing, dispersing and reinvesting profits) were regarded as "legalisation"? If that formula is incorrect, the Government are invited to give a short description of what was regarded as "embezzlement" and what as "money laundering".

34. It appears that the prosecution case was based on the assumption that the producing entities were "forced" by the applicants to sell their oil at a very low price, and that this was not their free choice. How did the applicants "force" the producing entities to enter into disadvantageous agreements? What particular mechanisms were used and how did the law at the time distinguish between agreements which breached only the Public Companies Act and the Civil Code and were thus invalid, or agreements which had an additional criminal intent behind them?

35. How did the court calculate the "market price of oil" which served as a basis for calculating the overall value of the "misappropriated" oil? Was it correct, in calculating the price of the oil allegedly misappropriated by the applicants, to use the market price of oil and its derivatives in the ports of Amsterdam, Rotterdam, etc. as the starting point, rather than the domestic prices (see, in particular, page 616 of the judgment)?

36. Did the court try to assess the difference between the "internal price" as applied by Yukos to pay the producing entities in the regions where the oil was extracted, and the price which the producing entities' competitors (i.e., the oil-extracting subsidiaries of Lukoil, Sibneft, TNK, etc.) in those regions received for their oil?

37. Did the court assess the difference between the "internal price" of Yukos oil as applied on the date when it crossed the border (i.e. changed hand between a Russian trading company and a foreign trading company) and the prices of oil extracted by Yukos's competitors in Russia and declared by them at the border for the purpose of export?

38. The applicants alleged that the material conclusions of the Khamovnicheskiy District Court contradicted earlier findings by the other courts which examined cases against the applicants themselves, against their business partners and against Yukos plc as a whole. In particular, in the applicants' words, the award made against Yukos in previous proceedings

were based on the assumption that Yukos was a *de facto* owner of the oil which had been traded through the chain of "sham entities" (trading companies). In the criminal case under examination the court decided that the oil had been the property of the producing entities, which had been "embezzled" by the applicants. How did the findings of the Khamovnicheskiy District Court accommodate the earlier findings of the courts in the criminal cases and tax proceedings related to the activities of Yukos? More generally, does Article 7 of the Convention, or any other Convention provision, in particular Article 6, guarantee consistency in the individual decisions of domestic courts concerning the same matters and the same parties, let alone consistency in the case-law?

39. What proportion of the profits received from the sale of oil extracted by the producing entities or processed in Yukos's refineries was "returned" to Yukos and its producing entities? Was the return of profits (reinvestment) made in the form of gratitious payments (without any obligation to re-pay) or did the producing entities receive funds from the trading companies in exchange for something, such as promissory notes, for example, or as credits? If the reinvestment was one-way, without reciprocal provision of securities, goods or obligations, what was the legal basis for such transfers? If, in order to justify such payments, the producing entities had to issue promissory notes to the payers, were those promissory notes always issued by the producing entities themselves, by Yukos plc, or by any other intermediary company or companies?

40. Were the applicants free to withdraw the money concentrated in the trading companies and use that money at their own discretion? In other words, what guarantees (besides the applicants' good will) were there that the profits accumulated in the trading companies would be returned to Yukos plc or to its producing entities as reinvestement or for the payment of dividends etc.? Did the situation in this respect change at the point when Yukos started to include its major trading companies in the consolidated financial reports, under the US GAAP rules?

H. Detention of the applicants in the remand prisons in Chita and Moscow

41. Was there an interference with the applicants' "private and family life" in connection to their transfer from the penal colonies where they had been serving their prison sentences to the remand prisons, first in Chita and then in Moscow? In particular, did the regime in the remand prisons permit the detainees to enjoy the same level of family contacts as the regime in the penal colonies?

42. If there was an intereference on account of the placement of the two applicants in the remand prisons, was it in accordance with the law and necessary in a democratic society? In particular, what was the aim of transferring the applicants to the Chita remand prison from their colonies in Kharp and Krasnokamensk? Did the authorities pursue "other goals" than those officially stated when placing the applicants in the Chita remand

prison? How did the authorities choose the specific remand prisons in which to place the applicants, what was the legal rule applied in the case of each of them and how were the individual decisions in each case formulated? What was the legal basis for detaining the applicants in a remand prison throughout the period concerned, rather than in a penal colony? The Government are invited to comment, in particular, on the applicants' allegation that the choice of a remand prison in Chita as the place for their detention was arbitrary and that there had been gaps between the detention orders imposed during the trial.

I. Double jeopardy

43. Were the applicants convicted twice for the same offence, in breach of Article 4 of Protocol No. 7 of the Convention? In particular, how does the first conviction of the applicants for the use of tax cuts unlawfully obtained by the trading companies relate to the second conviction, which related to the same business operations with the same oil during the same periods of time? Is it permissible, under Article 4 of Protocol No. 7 to the Convention or Articles 6 and 7 thereof, to convict a person for evading taxes from business operations with stolen (embezzled, misappropriated, etc.) property? The Government are, in particular, invited to refer to other national legal systems where such prosecution is possible, if they exist.

44. Was there a breach of Article 4 of Protocol No. 7 of the Convention on account of the fact that the applicants were tried separately under different heads for facts which constituted essentially the same business scheme, and received two separate prison sentences for those offences?

45. Does the crime of "embezzlement" under Russian law presuppose that the injured party has suffered any damage as a result thereof, or is the existence of damage not a *conditio sine qua non* for a conviction for embezzlement? If the existence of "damage" is a necessary element, does the qualification of the crime as "embezzlement" depend on the amount of the damage or only on the price of the "embezzled" property?

46. Did the second judgment take account of the amounts which the producing entities failed to pay to the State in the form of taxes, given that the group's profits were concentrated in trading companies registered in the low-tax zones (ZATOs)? The Government are invited to refer to the relevant parts of the judgment analysing that element. If the applicants have already been punished for not paying taxes to the State in respect of the operations imputed to Yukos, is it justified, under Article 4 of Protocol No. 7 to the Convention, to punish them again for "pocketing" part of the profits of the producing companies, which would in any event have gone to the State as taxes?

J. Improper motivation for the prosecution

47. Was there a violation of Article 18 in that the restriction of the applicants' rights provided by Articles 5, 6 and 8 was imposed for purposes

"other than those for which they have been prescribed"? The applicants criticised the test applied by the Court under Article 18 in their previous cases. In relation to this criticism, the parties are invited to show how allegations of "bad faith" on the part of the authorities are examined in other jurisdictions, both national and international.

48. If the Court is to find a violation of Article 18 in the cases at hand, does this necessarily lead to a conclusion that the applicants' conviction was invalid?