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

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Charges against two Russian business executives were brought in accordance with the law, but the hearing of their case was unfair and their placement in remote penal colonies unjustified

The case of **Khodorkovskiy (no. 2) and Lebedev (no. 2) v. Russia** (application nos. 11082/06 and 13772/05) concerned criminal proceedings which ended in a judgment of September 2005 by the Moscow City Court in which Mr Khodorkovskiy and Mr Lebedev, two former top-managers and major shareholders of a large industrial group, were found guilty of large-scale tax evasion and fraud. The domestic proceedings at the heart of the present case are commonly known in Russia as "the first trial of Khodorkovskiy and Lebedev".

This is the second case lodged by Mr Khodorkovskiy and Mr Lebedev before the Court. Their first two applications (no. 5829/04 and no. 4493/04) concerned the beginning of their criminal prosecution and were examined by the Court in 2011 and 2007.

In today's Chamber judgment in the case, which is not final[1], the European Court of Human Rights held that there had been:

no violation of Article 3 (prohibition of inhuman and degrading treatment) as concerned Mr Lebedev's conditions of detention on remand but **a violation of Article 3** with regard to the humiliation of his being placed in a metal cage during court hearings on his case;

a violation of Article 5 §§ 3 and 4 (right to liberty and security) concerning the length of Mr Lebedev's detention on remand and the delayed examination of a detention order of December 2004 but **no violation as concerned the other complaints** under Article 5;

no violation of Article 6 § 1 (right to fair trial) with regard to the impartiality of the judge who presided at the applicants' trial or with regard to the time and facilities given for the preparation of their defence but **a violation of Article 6 §§ 1 and 3(c) and (d)** as concerned breaches of the lawyer-client confidentiality and the unfair taking and examination of evidence by the trial court;

no violation of Article 7 (no punishment without law) regarding the application of the tax law to convict the applicants, which the Court considered reasonable and corresponded to a common-sense understanding of tax evasion;

a violation of Article 8 (right to respect for private and family life) on account of Mr Khodorkovskiy's and Mr Lebedev's transfer to penal colonies in Siberia and the Far North, several thousand kilometres away from Moscow and their families;
a violation of Article 1 of Protocol No. 1 (protection of property) on account of the arbitrary way in which Mr Khodorkovskiy had been ordered to reimburse tax arrears owed by Yukos to the State following his conviction;

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

no violation of Article 18 (limitation on use of restrictions on rights) as concerned the complaint that Mr Khodorkovskiy's and Mr Lebedev's prosecution had been politically motivated; and,

a violation of Article 34 (right of individual petition) on account of the authorities' harassment of Mr Khodorkovskiy's lawyers.

Principal facts

The applicants are Mikhail Borisovich Khodorkovskiy and Platon Leonidovich Lebedev, Russian nationals. They are currently serving their prison sentences in the regions of Karelia and Yamalo-Nenetskiy (Russia).

Before their arrest the applicants were top-managers and major shareholders of a large industrial group which included Yukos oil company, Apatit mining enterprise, Menatep bank and a number of other large business entities. They were amongst the richest men in Russia. Mr Khodorkovskiy, the first applicant, was also politically active: he allocated significant funds to support opposition parties and funded several development programs and NGOs. In addition, Yukos pursued large business projects which went against the official petroleum policy.

The applicants believed that because of Mr Khodorkovskiy's political ambitions and his independence in business matters President Putin orchestrated criminal prosecution of Yukos managers which led to their conviction and imprisonment as well as the dismantlement of the Yukos business empire.

In 2003 the General Prosecutor's Office opened a criminal case which concerned allegedly fraudulent privatisation of Apatit mining enterprise in 1994. In July 2003 Mr Lebedev was arrested in connection with this case and detained on remand. In October 2003 Mr Khodorkovskiy was also arrested, charged and detained.

The facts relative to the arrest and the first months of the applicants' detention on remand were examined by the European Court in application nos. 5829/04 and no. 4493/04. The tax and enforcement proceedings brought against Yukos oil company, which led to its liquidation, were examined by the European Court in application no. 14902/04.

In the course of the investigation new charges against the applicants were added. In particular, the applicants were accused of having registered through their subordinates a number of companies in a low-tax zone. Those companies claimed to operate in the low-tax zones, and, on that ground, they qualified for tax cuts. However, in reality the trading companies had no business activities in those places and existed only on paper. The applicants were also suspected of having evaded personal income taxes by declaring their revenues in Yukos not as salaries but as "consulting fees". The applicants also faced other charges of an economic character.

In 2003 GPO conducted series of searches and seized tons of documents and electronic files. Many managers of Yukos fled Russia; others were questioned as witnesses or indicted and stood trial.

In the proceedings the applicants were assisted by a team of highly-qualified lawyers. However, the prison administration and later the judge insisted on checking all written exchanges between the applicants and their lawyers. On several occasions the lawyers, who were suspected of having breached the rules, were subjected to body-searches.

The trial started in June 2004 and lasted until May 2005. In the courtroom the applicants were detained in an iron cage which separated them from the public and from their lawyers. Any exchange of written documents between the applicants and their lawyers was only possible if the presiding judge reviewed the documents beforehand. The applicant's oral exchanges during the trial could be overheard by the convoy officers.

At the trial the court examined dozens of witnesses for the prosecution and studied hundreds of pages of written materials. The applicants asked for some of the documents to be excluded because they had been unlawfully obtained by the prosecution but the court admitted them for examination. The applicants also tried to obtain attendance of some of the witnesses for the prosecution, in particular two experts, but the court did not summon them.

On the substance of the case, the applicants pleaded not guilty. They claimed that the trading companies registered in the low-tax zone operated on the basis of agreements concluded with the local authorities and complied with the formal requirements of the law which made them eligible for tax cuts. For many years that mode of operation was not contested by the tax service.

In 2005 the defence started presenting their evidence. However, most of it was declared inadmissible by the court. Thus, the court refused to consider several expert opinions in the sphere of tax law and accounting, and rejected reports by two large audit firms. In essence, the court decided that the defence had no right to collect expert evidence if the experts appointed by the prosecution had already delivered their opinion. The defence also sought disclosure of certain documents, in particular official correspondence, without success.

On 16 May 2005 the applicants were found guilty on account of most of the charges and sentenced to nine years' imprisonment. In addition, they were ordered to pay to the State RUB 17,395,449,282 (over 510 million euros) on account of unpaid company taxes. On 22 September 2005 the Moscow City Court upheld the lower court's judgment in the main and reduced the sentence to eight years' imprisonment.

Both applicants were sent to serve their sentences in remote colonies. Thus, Mr Khodorkovskiy was sent to Chita region, which was over six thousand kilometres from Moscow, and Mr Lebedev was detained in the Yamal peninsula, more than three thousand kilometres from Moscow.

The applicants' case attracted considerable public attention in Russia and abroad. Many prominent public figures and influential organisations expressed their doubts as to the fairness of the criminal proceedings against Mr Khodorkovskiy and his colleagues. The Russian Government denied allegations of improper motives.

Procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 16 March 2006 and 28 March 2005, respectively.

Judgment was given by a Chamber of seven judges, composed as follows:

Isabelle **Berro-Lefèvre** (Monaco), *President*,
Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),
Ksenija **Turković** (Croatia),

Dmitry **Dedov** (Russia),

and also Søren **Nielsen**, *Section Registrar.*

Decision of the Court

Article 3: conditions in the remand prison (Mr Lebedev)

Mr Lebedev did not develop in sufficient detail his complaints about general conditions of detention in the remand prison. As to the conditions in the isolation cell, where he was placed for seven days in 2005, they were indeed quite tough, but in view of the short duration of his detention there the treatment complained of did not reach the minimum threshold of severity required for a violation of Article 3 to be found.

The Court also noted that Mr Lebedev had not been given hot meals and had been deprived of walks on the days when he was taken to court. However, he could afford to buy his own food, make tea or instant meals in the court building, and have physical exercise at least occasionally. In absence of other aggravating factors, such as overcrowding or bad conditions of transportation, the Court concluded that the conditions of detention on remand had not been inhuman or degrading.

Conclusion: no violation (unanimously)

Article 3: conditions in the courtroom (Mr Lebedev)

In response to Mr Lebedev's complaint that he had been placed in a metal cage during the court hearings, the Court noted that he had been accused of non-violent crimes, had no previous criminal record, and that there was no evidence that he had been predisposed to violence. His trial was covered by almost all major national and international mass media, so he had been permanently exposed to the public in such a setting. The security arrangements, given their cumulative effect, had been excessive and could reasonably have been perceived by Mr Lebedev and the public as humiliating.

Conclusion: violation (unanimously)

Article 5 § 3: length of detention on remand (Mr Lebedev)

Mr Lebedev was arrested on 2 July 2003. In Lebedev (no. 1) the Court did not find a violation of Article 5 § 3 on account of the length of his detention during the first months after his arrest. The question in the present case was whether the ensuing period of his detention until his conviction in May 2005 had been justified. The Court noted that after the end of the investigation the risk of tampering with evidence had diminished. In addition, Mr Lebedev had lost control over the company, and his ability to influence its personnel was therefore reduced. Furthermore, the domestic courts' references to the risk of absconding, "international connections" and "character" of the accused were too vague. Lastly, in ordering the extensions the courts had used stereotyped wording and had not considered alternative preventive measures. The Court therefore concluded that the domestic courts had failed to conduct a genuine judicial review of the need for Mr Lebedev's continued detention.

Conclusion: violation (unanimously)

Article 5 § 4: conduct of the detention proceedings (Mr Lebedev)

The Court noted a certain disparity between the parties in the preparation of the proceedings in which Mr Lebedev's detention had been extended, but found that it was not incompatible with Article 5 § 4 of the Convention. As to the alleged failure of the

court of appeal to give detailed reasoning for rejecting Mr Lebedev's arguments, this aspect of the case has already been addressed under Article 5 § 3. Finally, the Court also examined speediness of review of Mr Lebedev's appeals against the detention orders. The Court found that the 26-day delay involved in the examination of the appeal against the detention order of 14 December 2004 had not been justified.

Conclusion: violation on account of the delayed examination of the detention order of 14 December 2004, no violation on other points (unanimously)

Article 6 § 1: impartiality

The applicants claimed that procedural decisions taken by Judge Kolesnikova during their trial had shown that she was biased. However, in the opinion of the Court, that was not sufficient to reveal that the judge had had any particular predisposition against the applicants.

Next, the applicants argued that Judge Kolesnikova had herself been under investigation during their trial. However, that allegation was only a rumor, and was therefore dismissed by the Court.

Finally, the applicants suggested that Judge Kolesnikova had been biased because of her previous findings in the case of Mr Shakhnovskiy, another top-manager of Yukos. Mr Shakhnovskiy was found guilty for having received his salary in the guise of "consultancy fees" and thus obtaining tax cuts. The Court accepted that some of the findings of Judge Kolesnikova in the Shakhnovskiy case had been quasi identical to her finding in the applicants' case. However, the Court noted that, as a matter of practice, criminal adjudication frequently involved judges presiding over various trials in which a number of persons were co-accused. Judge Kolesnikova, under the Russian law, had not been formally bound by her earlier findings and had not made any statements which would prejudge the question of the applicants' guilt in the Shakhnovskiy judgment. Admission of certain evidence in Mr Shakhnovskiy's case had not prevented the judge rejecting that evidence in the later proceedings.

Conclusion: no violation (unanimously)

Article 6 § 1: fairness of the proceedings

Time and facilities for the preparation of the defence

The Court noted that Mr Lebedev had eight months and 20 days to study over 41,000 pages of his case-file, and Mr Khodorkovskiy had five months and 18 days to study over 55,000 pages of his. The Court noted the complexity of the documents, the need to make notes, compare documents, and discuss the case-file with lawyers. It also took account of the breaks in the schedule of working with the case-file, and of uncomfortable conditions in which the applicants had had to work (impossibility to make photocopies in prison, inability of the applicants to keep copies of the documents in their cells, restrictions on receiving copies of documents from their lawyers, etc.). However, the applicants were not ordinary defendants: each of them had been assisted by a team of highly professional lawyers of great renown, all of them privately retained. Even if they were unable to study each and every document in the case file personally, that task could have been entrusted to their lawyers. The lawyers were able to make photocopies; the applicants were allowed to take notes from the case-file and keep their notebooks with them. Indeed, the applicants, who both had university degrees, were senior executives of one of the largest oil companies in Russia and knew the business processes at the heart of the case arguably better than anybody else.

The Court further examined the conditions in which the defence had had to work at the trial and during the appeal proceedings. In particular, at some point the judge had decided to intensify the course of the trial and have hearings every day. However, the defence had been able to ask for adjournments when necessary, and such adjournments had been granted.

Finally, at the appeal stage the defence had had over three months to draft written pleadings and to prepare for an oral argument. Although the defence had had to start preparing their appeal without having the entirety of the trial materials before them and there had been doubts as to the accuracy of the trial record, the Court was not persuaded that any such inaccuracies had made the conviction unsafe. Furthermore, the defence was aware of the procedural decisions that had been taken during the trial and what materials had been added. They had audio recordings of the trial proceedings and could have relied on them in the preparation of their points of appeal.

Conclusion: no violation (unanimously)

Lawyer-client confidentiality

The applicants claimed that the authorities did not respect confidentiality of their contacts with their lawyers, in breach of Article 6 § 1 and 3 (c).

First, the applicants complained about summonses sent by the prosecution to Mr Drel, one of the lawyers for the applicants. However, Mr Drel refused to testify, and that refusal did not lead to any sanctions against him. So, in the Court's opinion that episode had had no effect on the applicants' right to legal assistance.

By contrast, the Court criticised the authorities for searching Mr Drel's office. Mr Drel was the lawyer for both applicants in the same criminal case in which the searches had been ordered, and the investigators were aware of that fact. The authorities had not explained what sort of information Mr Drel had allegedly had, how important it had been for the investigation, and whether it could have been obtained by other means. At the relevant time Mr Drel was not under suspicion of any kind. Most significantly, the search in Mr Drel's office had not been authorised by a separate court warrant, as required by the law.

The Court was also concerned with the prison administration perusing all written documents exchanged between the applicants and their lawyers during the meetings in the remand prison. First, such perusal had no firm basis in domestic law which did not regulate specifically such situations. Furthermore, notes, drafts, outlines, action plans and such like prepared by the lawyer for or during a meeting with his detained client are to all intents and purposes privileged material. Any exception from the general principle of confidentiality is only permissible if the authorities have a reasonable cause to believe that the professional privilege is being abused, which was not the case. The Court noted that there were no ascertainable facts showing that the applicants' lawyers or the applicants themselves might abuse the secrecy of their contacts. Moreover, the measures complained of lasted for over two years.

Finally, the Court examined the conditions in which the applicants had been able to communicate with their lawyers in the courtroom. Judge Kolesnikova had requested the defence lawyers to show her all written documents they wished to exchange with the applicants. Furthermore, the oral consultations between the applicants and their lawyers could have been overheard by the convoy officers. During the adjournments the lawyers had to discuss the case with their clients in the close vicinity of the prison guards. The Court concluded that the secrecy of the applicants' exchanges, both oral and written, with their lawyers had therefore been seriously impaired during the hearings.

Conclusion: violation (unanimously)

Taking and examination of evidence

The Court found in particular that the refusal of the domestic courts to hear at the trial two experts who had prepared an economic study for the prosecution was contrary to the requirements of Article 6 §§ 1 and 3 (d). Those experts had clearly been "key witnesses", since their conclusions went to the heart of some of the charges against the applicants. The defence had taken no part in the preparation of the study and had not been able to put questions to the experts at an earlier stage. In addition, the defence explained to the District Court why they needed to question those experts and there were no good reasons for preventing the experts from coming to the court.

It also expressed concern with the rejection on formal grounds of evidence proposed by the defence, and in particular the audit reports by Ernst and Young and Price Waterhouse Coopers. Those reports were relevant to the very subject-matter of the accusations against the applicants and related to expert evidence already obtained from the prosecution. In the opinion of the Court, the defence was therefore put in a disadvantageous position vis-à-vis the prosecution. It meant that only the prosecution had been entitled to select experts, formulating questions and producing expert reports for the court, while the defence had no such right. The only option available for the defence was to obtain oral questioning of "specialists" at the trial, but "specialists" had a different procedural status to "experts", as they had no access to primary materials in the case and the court refused to consider their written opinions. Thus, the defence had been unable to challenge the opinions of experts invited by the prosecution. It had therefore perturbed the equality of arms between the parties.

In view of the above findings the Court considered that there was no need to examine other allegations by the applicants concerning the process of administration of evidence.

Conclusion: violation (unanimously)

Article 6 § 2: presumption of innocence and metal cage issue

The applicants complained that being tried whilst caged portrayed them to the public as criminals, contrary to the presumption of innocence. The Court considered that, in view of its findings under Article 3 in the present case as well as in the case of Khodorkovskiy No. 1, it was not necessary to examine this part of the applicants' complaint separately.

Conclusion: no need for separate examination (unanimously)

Article 7: foreseeability of the tax law

The applicants argued that they suffered from a completely novel and unpredictable interpretation of the tax law. They claimed that the trading companies' operation in the low-tax zone and the technique of "transfer pricing" they had used was well-known and regarded as lawful.

The Court started with recalling its findings in the Yukos case, which concerned the use of the same tax minimisation technique. In that case the Court concluded that the recovery from Yukos of the amount of unpaid taxes did not violate Article 1 of Protocol No. 1 (protection of property) to the Convention since the tax cuts had been obtained by the trading companies unlawfully.

It then observed that forms of economic activity are in constant development, and so are the methods of tax evasion. The law in this area may be sufficiently flexible to adapt to new situations, without, however, becoming unpredictable.

Indeed, previous to the applicants' case, there were no criminal convictions for such tax minimisation schemes, the courts rejecting allegations of fictitious operations by trading companies in low-tax zones as it was very difficult for the prosecution to prove.

However, in the applicants' case the Court accepted as reasonable the national courts' conclusion that all operations of the trading companies had been sham. It considered that the scheme mounted by the applicants had to be distinguished from a bona fide tax minimisation technique. Whereas a part of the scheme had been visible to the authorities, the applicants had misrepresented or concealed some important aspects of it. Thus, they had never informed the tax authorities about their true relation to the trading companies. The benefits of the trading companies had been returned to Yukos indirectly. All business activities which had generated profit were in fact carried out in Moscow, not in a low-tax zone. The trading companies, which existed only on paper, had no real assets or personnel. The tax minimisation was the sole reason for the creation of the trading companies in the low-tax zone. Finally, it was difficult for the Court to imagine that the applicants, as senior executives and co-owners of Yukos, had not been aware of the scheme and had not known that the information included in the fiscal reporting of the trading companies did not reflect the true nature of their operations. Thus, the applicants' acts could be reasonably interpreted as "submitting false information to the tax authorities" which was the definition of tax evasion under the Russian Criminal Code.

In sum, the Court concluded that even if the application of the law in the applicants' case had been novel and unprecedented, it was not unreasonable and corresponded to the common-sense understanding of tax evasion.

In so far as the personal income tax evasion was concerned, the applicants insisted that they had given consulting services to foreign firms and that the tax cuts they had received as "individual entrepreneurs" were legitimate. However, the domestic courts had established that such service agreements were fictitious, and that the applicants had knowingly misinformed the tax authorities about the true nature of their revenues ("fees" instead of "salary"). Those conclusions were reasonable and the Court upheld them.

Finally, the Court did not accept the applicants' argument that the authorities' long-standing tolerance of such "transfer pricing" arrangements had made them legitimate and excluded criminal liability, primarily because the reasons behind such tolerance were unclear. It was possible that the authorities had simply not had sufficient information or resources to prosecute the applicants and/or other businessmen for using such schemes. It required a massive criminal investigation to prove that the documents submitted to the tax authorities had not reflected the true nature of the business operations. Finally, there was no evidence that tax minimisation schemes used by other businessmen had been exactly the same as the scheme employed by the applicants. The Court therefore concluded that the authorities' attitude towards such practices had not amounted to a conscious tolerance or selective application of criminal law.

Conclusion: no violation (unanimously)

Article 8: transfer to remote penal colonies

The applicants complained that their transfer to the penal colonies situated in Siberia and in the Far North had made it impossible for them to see their families. The Court accepted that the situation complained of constituted an interference with the applicants' "private and family life". The Federal Service of Execution of Sentence (FSIN) had the power to dispatch convicts from big cities to the colonies situated in other regions to avoid overcrowding. However, for such situations the Russian Code of Execution of Sentences established a simple rule: it allowed the sending of a convict to the next

closest region, but not several thousand kilometres away. A general plan establishing quotas for the distribution of convicts amongst colonies existed, but it did not describe a comprehensible method of distribution of convicts. And it was hardly conceivable that there were no free places for the two applicants in any of the many colonies situated closer to Moscow. The Court stressed that the distribution of the prison population must not remain entirely at the discretion of the administrative bodies and that the interests of the convicts in maintaining at least some family and social ties had to somehow be taken into account.

Conclusion: violation (unanimously)

Article 1 of Protocol No. 1 to the Convention: damages Mr Khodorkovskiy had been required to pay

Along with the criminal conviction the applicants were ordered to reimburse over 17 billion Rubles (over 510 million euros) to the State in tax arrears due by Yukos. The Court agreed that where a limited liability company is used merely as a façade for fraudulent actions by its owners or managers, piercing of the corporate veil may be an appropriate solution for defending the rights of its creditors, including the State. However, there should be a solid legislative basis for doing so. Neither the Russian Tax Code at the time nor the Civil Code permitted the recovery of company tax debts from the company's managers. Furthermore, the Russian courts repeatedly interpreted the law as not allowing shifting of liability for unpaid company taxes from the company to its executives. Finally, the Court stressed that the findings of the district court, in the part concerning the civil claim, were extremely short and contained neither a reference to applicable provisions of the domestic law nor any comprehensible calculation of damages, as if it was an insignificant matter. The Court concluded that the award of damages in favor of the State had been made in an arbitrary fashion, in violation of Article 1 of Protocol No. 1 to the Convention.

Conclusion: violation (unanimously)

Article 18: Political motivation of the prosecution

The applicants alleged that their prosecution was politically motivated.

The Court recalled that the whole structure of the Convention rested on the general assumption that public authorities in the member States acted in good faith. A mere suspicion that the authorities had used their powers for ulterior purposes was not sufficient to prove a violation of Article 18; instead a very exacting standard of proof had to be applied.

The Court agreed that circumstantial evidence surrounding the applicants' arrest and trial constituted at first glance a case of politically motivated prosecution. Indeed, this opinion of the applicants' trial had been corroborated by political figures, international organisations and courts in many European countries.

Thus, the Court was prepared to admit that some government officials had their own reasons to push for the applicants' prosecution. However, it was insufficient to conclude that the applicants would not have been convicted otherwise. None of the accusations against the applicants had concerned their political activities, the applicants were not opposition leaders or public officials, and the acts they stood accused of were not directly related to their participation in political life. The accusations against the applicants had been serious, and the case against them had had a "healthy core". Thus, even if there were an element of improper motivation behind their prosecution, it did not grant

immunity from answering the accusations against them. Nor did it make the prosecution illegitimate "from start to finish", as alleged by the applicants.

Ultimately, the Court stressed that the above finding did not preclude it from examining under Article 18 the subsequent proceedings concerning the applicants' conviction in the second criminal case.

Conclusion: no violation (unanimously)

Article 34: harassment of the applicants' lawyers (Mr Khodorkovskiy)

Mr Khodorkovskiy complained that, in order to prevent him from complaining to Strasbourg, the authorities had harassed his lawyers. The Court observed that Mr Khodorkovskiy had submitted a very detailed and well-supported application to show notably: the negative attitude of the law-enforcement agencies vis-à-vis his legal team, especially after the end of the first trial; several attempts by the prosecution to disbar his lawyers, subjecting them to administrative and financial checks; and, the denial of two of his foreign lawyers visas, one having been expelled from Russia in a precipitated manner. The aim of such disciplinary and other measures directed against Mr Khodorkovskiy's lawyers was far from evident, and the Government was silent on those points. It was therefore natural to assume that such measures had been linked to his case before this Court. It therefore concluded that the authorities had failed to respect their obligation under Article 34 of the Convention to not interfere with the right of individual petition to the Court.

Conclusion: violation (unanimously)

Article 41: just satisfaction

The court held that Russia was to pay Mr Khodorkovskiy 10,000 euros (EUR) in respect of non-pecuniary damage. Mr Lebedev's pecuniary claims were rejected in full.

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