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Mikhail Khodorkovsky “THE WINTER OF JUSTICE: WORDS AND REALITY”

I have felt it necessary to address the President of the RF personally in connection with the shameful verdict of the Khamovnichesky Court.

I know that my move may not meet with understanding amongst those of my fellow citizens who are convinced that President Dmitry Medvedev doesn't decide anything, and amongst those who feel that his interference in the activity of a court is impermissible.

I want to respond to each of these two groups.

We are not talking here about interfering in justice or about how to save me. The complete breakdown of justice we are observing threatens grave consequences for each and every one – for the entire country.

The constitutional duty of the President - is to ensure the independence of the judiciary, not just to declare it. I therefore consider that when facts emerge bearing witness to the non-independence of the judge in the most high-profile case, it is not only the right of the head of state, but his duty, to give the order to organise their truly independent investigation. We have already seen an example of an investigation under the control of the President in the recent past - in the «Tri kita» case. I shall note: while my conclusion about the non-independence of the judge is not at all based on the prime minister's scandalous speech alone, I consider it inadvisable to reveal the entire volume of information that I have before an investigation has been ordered.

At the same time, try to explain in any other way the ridiculous situation when, by a “court decision”, tens of millions of tonnes more oil have been stolen than were produced, when declarations are made in the verdict about “mistrust” of the fact that oil in Siberia costs less than in Western Europe, etc., - that is, about something that the defence, the mass information media and even the judge laughed at in the course of the trial together with a part of the state prosecutors. The President of Russia is the guarantor of the rights and liberties of citizens. A flagrant violation of these rights is - the worsening legal nihilism of judges and, in particular, the loose interpretation by them of criminal law.

Where can such pseudo-judicial practice lead the country, when a court asserts that a transaction that results in the seller receiving a profit in the billions is “seizure not involving exchange for value” - theft?!

A corresponding enquiry on behalf of the President to the Constitutional Court of the RF could put a stop once and for all to such artificial criminalisation of ordinary business turnover, broadly used by mercenary officials for raiderism and extortion. The filing I made to this court about this same problem ended with a stock run-around, as have a multitude of other such filings.

Of course, if the courts are insolently not executing the law, while the President of the country doesn't have the opportunities to change the situation, a constitutional crisis arises. But, fortunately, things have not yet gotten this far. The experience of the commercial courts shows – Dmitry Medvedev and his team know the ways to get the

situation in the courts to start changing for the better. There is very much being said now about President Dmitry Medvedev's informal limitations, but I consider it counterproductive to get into a discussion of these assessments.

My country has a President, and his constitutional duty is - to protect the rights and liberties of citizens.

The state of the judicial system is - his direct sphere of responsibility and a priority that has been announced by him.

I am also convinced that President Medvedev, as a sensible and pragmatic politician, is aware of the true attitude of the Russian intelligentsia and all not-indifferent people, towards demonstrative siloviki and judicial arbitrariness. These people, of course, will never stoop so low as to take part in pogroms, but it is extremely irrational and dangerous for the power to deepen the divide between declarations and reality even more and thereby demonstrate that some other way of protecting civil rights besides "taking to the streets" practically does not remain in the country. Without people's trust in the institutions of state, the capacities of brute force as a method of administration are not infinite.

Moreover, with such "administrative technologies", there is absolutely no need to even speak about the prospects for modernisation in the 21st century. A country claiming to be called civilised in the 21st century, but, at the same time, one where the government official is above the law and the Court, would be difficult to find on Earth, if we're not talking about Russia.

The need for fairness, human rights, and the protection of one's own dignity in our society is something whose time has come, and it is now seeking forms of realisation. The judicial and law-enforcement systems, demonstrating legal nihilism and an anything-goes attitude, are pulling both the ever more brazen bureaucracy and its victim – the ordinary person – outside the pale of the law.

The appetites of officials, including judicial ones, are growing and the last remaining incentives to execute one's official duty with honesty are disappearing. Citizens are compelled to either pay ransom or seek appropriate forms of protest. In so doing, it would be stupid to underestimate the role of the intelligentsia as the catalyst of the protest quest process. When decent people are ashamed for their country, then the sense of universal lies and defencelessness before a bureaucrat – someone whose behaviour knows no bounds and a politician - a raider arises, when it becomes indecent for a true member of the intelligentsia to serve the power – this is a profound moral conflict and a dangerously festering wound in society. The delegitimation of the institutions of power in the eyes of many people – is an extremely dangerous thing.

In such a situation, I felt it was my civic duty to turn directly to the President with a call to take the steps necessary to bring the judiciary back within the framework of the law. I want to underscore: I am not proposing to pressure the courts and to dictate to the courts. On the contrary, I am proposing to relieve them from pressure, both demonstrative and covert, from the humiliating role of an appendage of the repressive system and an object of manipulation on its part. To explain using concrete examples that the courts are needed in order to serve justice in the interests of society, not for carrying out contracts – even those coming from the very "top". And as concerns the examples of demonstrative legal nihilism in the monstrosity of a verdict that crowned the landmark trial, they – are a direct threat to the country's entire legal system, at any rate in the realm of economic activity. I mentioned to the President but a few examples out of the many that I consider it particularly dangerous to replicate.

This may seem like drivel, but in the court verdict it actually does say: that transactions for the purchase of output by the head company from its 100% consolidated subsidiaries – are theft, that is the seizure of a good not involving exchange for value, and by its shareholder no less; that the producer of the output receiving a profit in the billions confirms the “lack of exchange for value in the seizure” of this same output from these same producers; that the “correct” price of oil in the fields of Siberia – this is the price in Rotterdam (a port in Western Europe), notwithstanding even customs duties and transport costs. All of the court’s “reasoning” has been gathered on the website www.khodorkovsky.ru.

And it includes, for example, things like:

“Assertions that the oil became the property of OAO NK YUKOS are absent in the commercial court decision... From the commercial court decision it follows that the owner of the oil was OAO NK YUKOS...”.

I can not bring myself to call “this” anything other than pseudo-legal devilry. Or: “...the guilt of the defendants (on trial for the theft of oil) is confirmed by the fact that they took active part in building up the vertically-integrated structure OAO NK YUKOS”; “the defendants... concealed the committed theft... with the payment of dividends (to shareholders)”; “increasing the volumes of production by YUKOS (confirms the charge, since)... it corresponded to mercenary aspirations to receive ever more profit”.

That is, whilst the leaders of the country are inviting investors and promising them a maximally favourable environment, Russian courts are declaring that increasing production volumes, profit, and paying dividends are evidence of criminal activity. But, at the end of the day, Dmitry Medvedev is himself a civil lawyer, having a scholarly degree, and he has enough specialists to analyse the hundreds of pages of the obvious and demonstrative legal heresy that was signed by an official in judge’s robes who had been appointed by the President – should there be such a desire. What is important is something else: what happened in the Khamovnichesky Court – is not an exception, but merely the most vivid and well-known example of the Russian practice of extortion, unlawful redistribution of property and persecution of undesirables with the help of fictitious justice.

An absolutely shameless verdict in a high-profile public trial, where believability is demonstratively absent but there is an obvious extralegal objective and a wild term – 14 years – what is this if not an unequivocal signal, an invitation to the “brotherhood of officials”, that anything goes?

One should not lull oneself, or the world, into a false sense of security about how the YUKOS case was an exception (about the only exceptional about it is the sheer scale of the debacle), or about the presidential initiative with respect to not allowing arrests. Our court system, hiding behind incantations about independence and the impermissibility of “pressure”, actually simply spits on any “inconvenient” law. But even if they don’t arrest you, the fee for a “roof” in the absence of judicial protection will without a doubt still see a rise. And as to human dignity, it is best not to even think about that.

Accountability only to the bosses, along with non-compliance with the law – is the sign and the privilege of the tools of extralegal repression. The right not to execute the law is purchased at the price of political passivity and the submissiveness of bureaucrats.

In such conditions, one can understand why Russia is attractive to opportunists and pilferers of the treasury, but how to attract and retain serious investors, intellectuals, for whom the whole world is wide open? With a many-fold overstatement of the profit

ratio? With the premier's personal guarantees? These are the modernisational tools of the 21st century?

As concerns me personally, the first case – the “tax” one, about which the President remembered in Davos – and the bankruptcy of YUKOS connected with it, has already been recognised more than once by international and foreign courts as “discriminatory” and an “unusual” application of the law. The second one – is not only absurd, but even directly contradicts the first, and this is already comprehensible to everybody.

With such “standards of proof”, the latest announced term has no meaning whatsoever. “Grounds” for insane charges with the objective of endless imprisonment are limited only by the fantasy of the official, and it - by the wishes of the bosses. I know – judge of the Khamovnichesky Court Viktor Danilkin is not in the least bit insane. Furthermore, in the twenty months of the trial I have become convinced – he is a strong professional and a conscientious person. What kind of a choice did he have to be made to face in order to force him to sign “this”?

What will his conscience do to him?

What do you call people who have done something like this to someone? What do you call those who pretend they don't notice what's going on, who believe in the independence of this “court” and who call the brazen little piece of paper an “act of justice”? Even though there are similar things taking place in hundreds of trials all over the country.

Maybe the time has come already to loudly tell the power: “Enough promises. Show us right here and right now that there is no place for arbitrariness in Russian courts. That a person can achieve fairness in them not for a bribe, not by way of extreme forms of protest, but according to the law, as is customary in a normal modern society! That you want to and can protect a person and his business from arbitrariness, and are not using arbitrariness in your own interests”.

Way back in the 4th century, the Blessed Augustine said that a state without fairness – is but a band of robbers, nothing more.

But Russia in the 21st century deserves better.

Wouldn't you agree?

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