

## Analysis

# The Second Trial of Mikhail Khodorkovsky

By Bill Bowring, London

### Abstract

After Mikhail Khodorkovsky served much of his original eight-year prison term, the authorities have filed a new set of charges against him. If, as the defense lawyers argue, these charges are absurd, then Khodorkovsky's second trial, like the first, is political and should be evaluated on that basis. In contrast to the other "oligarchs," Khodorkovsky openly challenged Vladimir Putin through his political and philanthropic activities. Although Khodorkovsky's vast wealth makes him unpopular with many Russian people, the Kremlin apparently fears that he would be able to manipulate Russia's corrupt system to his advantage.

### A Second Trial on the Heels of the First

On 16 May 2005, Mikhail Borisovich Khodorkovsky was sentenced to nine years in prison. Later the Moscow City Court reduced this term to eight years, and he has been serving his sentence in a labor colony in Chita, in the far east of Russia. On 5 February 2007 further allegations were made against him, and new charges were brought on 30 June 2008. The authorities are now holding him in Matrosskaya Tishina (Sailor's Silence) pre-trial detention prison in Moscow. The preliminary hearing of the new charges began on 3 March 2009, and the trial proper started on 31 March. It will continue for some time to come, and can be followed on the "Khodorkovsky & Lebedev Communications Center", at <http://www.khodorkovskycenter.com/>, a site established by Khodorkovsky's and Lebedev's lawyers "to raise awareness of their status in Russia as political prisoners."

The conduct alleged in the new charges has been the subject of investigation since 2004, while the first trial was still underway. The prosecution placed the defense lawyers on notice of its intent to announce them as official charges on the same day the court completed reading the verdict, on 31 May 2005. The new charges were formally announced in February 2007, though the prosecution delayed going to trial for approximately 2 years. There has been much speculation as to the reasons for this delay.

The defense lawyers received the indictment or "accusatory conclusion" on 16 February 2009. It consisted of 14 volumes and 3,500 pages in files which comprise several cubic meters. The state charged Khodorkovsky of embezzling 350 million tons of oil worth \$20 million, and money laundering of \$21.4 million. That is: embezzling all oil produced by three YUKOS production subsidiaries for six years; embezzling shares held by a YUKOS subsidiary in one of the production companies and five other companies;

and money laundering resulting from the sale proceeds of the allegedly embezzled oil and the shares in the indirect subsidiaries.

According to the defense lawyers, the most obvious absurdity of the new charges is the concept that Khodorkovsky and Lebedev physically took possession of and embezzled approximately 350 million metric tons of oil. Where would they have put it? The lawyers argue that they can demonstrate that the proceeds of the sale of this oil was in fact properly expended on YUKOS activities.

### A Rise to Riches

Who is Mikhail Khodorkovsky? He was born in 1963, the son of two chemical engineers, in an ordinary Moscow Jewish family. His nemesis, Vladimir Putin was born in 1952. The fact that Khodorkovsky is ten years younger than Putin is a significant factor in his downfall. In 2004, at the time of his arrest, he was the wealthiest man in Russia, and was reputedly the 16th wealthiest man in the world.

Like a number of his fellow "oligarchs", he started his career in the Komsomol, the Young Communists. He opened his first business, a private café, in 1986. This was one of many such enterprises made possible by Mikhail Gorbachev's revolution, carried out under the slogans of perestroika (rebuilding) and glasnost (openness), which ended with the collapse of the USSR. In 1987 Khodorkovsky and his partners opened a "Center for Scientific and Technical Creativity of the Youth". The Center was involved in importing and reselling computers, and trading a wide range of other products. By 1988 Khodorkovsky had built an import-export business with a turnover of 80 million rubles a year (about \$10 million USD). With the cash earned through trading, Khodorkovsky and his partners used their international connections to obtain a banking license to create "Bank Menatep" in 1989.

This was one of Russia's first privately owned banks. The collapse of the USSR in 1991 brought opportunities for Khodorkovsky and others to become fabulously wealthy.

### Putin's Path to Power

Vladimir Putin became acting president of Russia on the stroke of midnight 1 January 2000. His first act was to carry out the task which had been entrusted to him: to grant immunity from prosecution to outgoing President Boris Yeltsin and his family. Putin had been bankrolled by a group of "oligarchs", Russia's wealthiest businessmen, led by Boris Berezovsky. However, during the election campaign leading to his victory on 26 March 2000, and in his State of the Nation address of 8 July 2000, Putin began to speak of the need to distance government from big business. He broke from Berezovsky. Indeed, he talked, echoing Stalin's campaign in 1929 to "liquidate the kulaks as a class," of his aspiration to "liquidate the oligarchs as a class."

This assault on the oligarchs "as a class" was renewed in the run-up to the December 2003 parliamentary elections and the March 2004 presidential campaign. The target this time was Khodorkovsky and the YUKOS oil company. On 2 July 2003 Platon Lebedev, the head of Bank Menatep, which owned YUKOS, was arrested in connection with US\$280 million worth of share acquisitions in 1994, in the country's largest fertilizer company, Apatit. The charges against him were of large-scale fraud. The campaign against YUKOS culminated in Khodorkovsky's arrest on 25 October 2003 in a dawn raid on his plane in Novosibirsk. The planned merger between YUKOS and Sibneft to create one of the world's largest oil companies was suspended. YUKOS has now been broken up and its assets seized by the Kremlin.

Putin's political instincts proved correct. According to the polling organization VTsIOM-A (now Levada Center), the arrest of Khodorkovsky had the effect of boosting Putin's popularity from a high 73 percent in October 2003 to an unassailable 82 percent in November 2003. The poll of 1,600 Russians was conducted between 13th and 16th November 2003. According to the founder of VTsIOM, Yuri Levada: "This event had a strong influence on the president's job approval rating. His rating grew. The majority of the population approved of the attack against YUKOS and Khodorkovsky because the very rich are extremely disliked in this country and people are ready to believe any accusation against them. Because of this, in a measurable period of time, Putin's job approval rating grew significantly."

### A Political Clash

Why was Khodorkovsky singled out, together with his colleagues in YUKOS, and YUKOS itself? In the words of William Tompson, a professor at the School of Slavonic and East European Studies (UCL), Khodorkovsky "... had clashed with both the Kremlin and a number of companies linked to it. Alone among the oligarchs, he had allowed himself publicly to contradict the president, doing so on at least one occasion to Putin's face. He had also publicly hinted at future political ambitions of his own, leading many to suspect that he wished to succeed Putin... In short, the Yukos chief seemed no longer to regard himself as bound by any bargain, implicit or explicit, to stay out of politics."

All this was reflected in Khodorkovsky's final statement in his first trial, delivered to the Court on 11 April 2005. He emphasized his Russian patriotism; he viewed all the events surrounding YUKOS and himself in terms of the interests and values of Russia. He was particularly proud of the fact that he was one of the first advocates for transparency in business, and a champion of best practice in corporate governance. His support for independent media and a variety of political forces was motivated by his desire for a free and fair country, and he had no regrets whatsoever for this. He concluded:

"I hope very much that the court proceedings which conclude today will help to change both the situation and public opinion. The publicity and attention to the trial from the whole of Russian society and lawyers from all over the world provide all the grounds for this to happen. I believe that my country, Russia, will be a country of justice and law."

Many commentators believe that Putin really feared Khodorkovsky. This fear was based on the following reasons. First, Putin believed that in a country as corrupt as Russia money can buy great influence, and Khodorkovsky was enormously rich. He had excellent connections with the governors and presidents in the 89 subjects of the Russian Federation.

Next, Khodorkovsky presented himself as a Russian patriot, through his sponsorship of culture, education and science – for example, planning to spend \$100m over ten years to develop the (prestigious and progressive) Russian State University for the Humanities in Moscow. The Open Russia Foundation, founded by Khodorkovsky, was officially launched in December 2001 in London with an endowment of £10 million. Khodorkovsky said that the motivation for the establishment of the Open Russia Foundation was to foster openness, understanding, and integration between the people of Russia and the rest of the world. The US

launch took place in the US Library of Congress on 18 September 2002. It was the first-ever international corporate philanthropic foundation in Russia's history.

Khodorkovsky also had influence in the media. In September 2003, using Open Russia as a vehicle, he purchased the prestigious weekly newspaper *Moscow News* and installed the charismatic television commentator Yevgenii Kiselyov there as editor.

He had allies in the West. In the eyes of many Western commentators and politicians he was the symbol of Russian liberal capitalism. He frequently dealt directly with foreign firms and even governments. Thus, in the United States he reportedly had meetings with senior military officers and the Vice-President, and hired former Clinton administration official Stuart Eisenstadt to help him lobby effectively. He had begun to "do things that in Russia only the president can do."

And he was young, 10 years younger than Putin, and could have been a more serious competitor in 2008. Many regarded him as a brilliant manager, who was working to clean up his image. While his wealth made him unpopular with the mass of the population, he tried to use some of his income to support causes that would ensure him the backing of some parts of the population.

There is increasing support for the view that the prosecution of Khodorkovsky, Lebedev, and more than 40 of their associates, including foreign citizens, was politically motivated. One such source is the Council of Europe. On 15th March 2004 the Committee on Legal Affairs and Human Rights of the Council of Europe's Parliamentary Assembly (PACE) appointed Sabine Leutheusser-Schnarrenberger, a former German Minister of Justice, as its Special Rapporteur on the circumstances surrounding the arrest and prosecution of

leading YUKOS executives. Following her investigations in Russia, on 25 January 2005, PACE passed a Resolution expressing the view that "the circumstances of the arrest and prosecution of leading Yukos executives suggest that the interest of the state's action in these cases goes beyond the mere pursuit of criminal justice, and includes elements such as the weakening of an outspoken political opponent, the intimidation of other wealthy individuals and the regaining of control of strategic economic assets."

There have now been a number of unsuccessful attempts by Russia to extradite Khodorkovsky's associates living in exile in Britain. On 18 March 2005, in his judgment in one of these cases, Senior District Judge Timothy Workman said "I am satisfied... that Mr Khodorkovsky was seen as a powerful political opponent of Mr Putin. In view of the facts I have outlined I am satisfied that it is more likely than not that the prosecution of Mr Khodorkovsky is politically motivated."

In an interview published on 11 March 2009 the pundit Gleb Pavlovskiy gave his opinion that the second round of the prosecution of Khodorkovsky and Lebedev gave rise to great doubts. In Pavlovskiy's words: "Politically this is a certain type of trap. After all, the case has long since lost its topicality for the majority of people. It is being brought back to the people artificially. This is extremely disadvantageous for Medvedev and Putin, inasmuch as however the trial ends it will lead to the discrediting of the tandem. In the end someone is going to answer for this politically. Even if Khodorkovsky is acquitted, the question arises: What is this, five years ago it was not possible to evade taxes and now it is?... It marks a trend toward turning the YUKOS case into a Russian Guantanamo, where all those who are in prison are guilty, but politically their arrests were not right."

#### *About the author*

Bill Bowring is a professor at Birkbeck College, University of London. He was an expert witness in the extradition proceedings in which Senior District Judge Timothy Workman ruled that he viewed the first Khodorkovsky trial as politically motivated.