

**To: Judicial Collegium for Criminal Cases,
Chita Oblast Court**

From: Boris Borisovich Gruzd, Defence Lawyer,
Law Partnership “Yuri Schmidt and Partners”,
St.Petersburg City Bar Association, in defence of
the interests of accused Mikhail Borisovich
Khodorkovsky

CASSATION APPEAL

By her judgment of 14.03.2008, Judge L.V. Naryshkina from the Ingodinsky District Court of the City of Chita dismissed an appeal of lawyer B.B. Gruzd on finding unlawful actions (failures to act) of investigators Salavat Kunakbayevich Karimov, Mikhail Vladimirovich Tumanov, Radmir Albertovich Khatypov, Mikhail Alexandrovich Bezugly and Valery Nikolayevich Alyshev, who carry out (carried out) proceedings in the criminal case.

This judicial act is unlawful, groundless and should be repealed on the following grounds.

1.The court said in its judgment: *“Investigator S.K. Karimov timely, i.e. on 27 December 2004, notified M.B. Khodorkovsky about opening of a criminal case on this ground, which is not in contradiction with the requirements of Art. 146 CCP RF concerning the obligation of an investigator to notify the person against whom a criminal case has been opened, and therefore the arguments of the defence that M.B. Khodorkovsky was not notified about opening of this criminal case until 27 December 2006, which violated his rights provided for by Art. 46 para 4 CCP RF, fail.”* (p. 8, the bottom paragraph, p. 9, the top paragraph).

As such, the court deliberately distorted the argument of the defence, which was not that Khodorkovsky did not know **“THAT he was suspected but that he did not know WHAT he was suspected of.”**

From the notice, which was indeed sent on 27.12.2004 to the Chief of facility IZ 99/1 to be read out to arrestee M.B. Khodorkovsky, it is impossible to understand what specifically he was suspected of. The notice cite the date of the opening of the criminal case, the criminal case number and the article of the Particular Part of the RF Criminal Code under which the criminal case had been opened (*Annex 2*).

According to Art. 46 para 4 (1) and (2) CCP RF, a suspect is entitled to *“know what he is suspected of”* and *“to give explanations and evidence with regard to what he is suspected of”*.

According to Art. 6 § 3 (a) of the Convention for Protection of Human Rights and Fundamental Freedoms, everyone charged with a criminal offence has the minimum right *“to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him.”*

To be able to exercise the right to defence, the suspect should know at least the time, the place and the way of committal of the crime imputed to him (Art. 73 para 1 CCP RF).

Having failed to tell this information to the suspect, the investigator breached the requirements of the law.

2.The court also said: *“The appellant failed to submit to the court proofs of the fact that the investigator had refused to give a copy of the case opening order to M.B. Khodorkovsky and his defence team.”* (p. 9, the top paragraph).

Here, everything is wrong.

According to Art. 46 para 4 (1) CCP RF, a suspect has the right *“to receive a copy of an order opening a criminal case against him.”*

The right of the suspect is corresponded by the relevant obligation of the investigator and the prosecutor to provide him with an opportunity to defend himself by all ways and means not prohibited by the law (Art. 16 para 2 CCP RF).

In particular, the right of the suspect guaranteed by Art. 46 para 4 (1) CCP RF is secured by **the obligation** of the investigator to serve on him a copy of the order opening a criminal case against him (*see item 2.1 of Ruling of the RF Constitutional Court No. 467-O of 21.12.2004*).

Therefore, one does not need to send any specific request to the investigator to obey the law.

In addition, under Art. 14 para 2 CCP RF, the burden of refuting arguments adduced in defence of a suspect or an accused lies on the prosecution.

This means that it is the investigator and the prosecutor that should have proved that they had tried to serve a copy of the order opening the criminal case on M.B. Khodorkovsky and his defence and they refused to receive it.

Having shifted the burden of proof onto the defence, the court demonstrated its apparent bias.

3.Arguments of the court contain an internal conflict (Art. 380 para 4 CCP RF).

A)For instance, the court admits that *“the rights and obligations of a suspect and the essence of the suspicion were explained”* to Khodorkovsky only 2 (two) years later, *i.e.* on 27.12.2004 (p. 9, the top paragraph).

However, the court finds it perfectly normal and does not think that this violates the right *“to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him”* (Art. 6 § 3 (a) of the Convention for Protection of Human Rights and Fundamental Freedoms; Art. 46 para 4 (1) and (2)).

B)The court is likewise unable to refute the argument of the defence that it was only 2 (two) years later, *i.e.* on 27.12.2004, that for the first time *“the order to conduct preliminary investigation by an investigative team, the composition of the team and the procedure for challenging it provided for by Arts. 61 and 67 CCP RF”* were announced to Khodorkovsky (p. 9, the top paragraph).

Having admitted that Khodorkovsky had been deprived of this right for 2 (two) years, the court for some reason does not find a violation in this.

C)The court also agrees with the defence on the fact that for the first time Khodorkovsky was notified about prolongation of the preliminary investigation period on 02.03.2007 (p. 11, the second top paragraph).

But even this, despite the fact that by that time the investigation period had been prolonged on numerous occasions totally **up to 68 months** (*see Annex 3*) and the suspect knew nothing about this, looks lawful to the Ingodinsky District Court.

4.The Russian Constitution declares equality of all people before the law and in the court of law. Discrimination on any ground is unacceptable in a democratic state (*Article 19 of the RF Constitution; Art. 14 of the Convention for Protection of Human Rights and Fundamental Freedoms*).

Article 45 paragraph 1 guarantees the state protection of human rights and freedoms.

The state protection means, *inter alia*, that all officials must obey the law, and Art. 1 para 2 CCP RF emphasizes that “*the procedure for criminal proceedings established by this Code is mandatory for courts, prosecutorial agencies and bodies of preliminary investigation...*”

Everyone has the right to expect that the laws determining his rights will be observed by state bodies and their officials in any situation.

The defence knows the practice when in other similar cases courts found unlawful a failure to act of an investigator who failed to serve a copy of an order opening a criminal case on a suspect (*see Annexes Nos. 4 and 5*).

Application of the law to M.B. Khodorkovsky not in accordance with its literal meaning violates his right to equality of all people before the law and in the court of law (Article 19 of the RF Constitution; Art. 14 of the Convention for Protection of Human Rights and Fundamental Freedoms).

Dismissal of the appeal of the lawyer also effectively deprives Khodorkovsky of the state protection (Art. 45 of the RF Constitution) and constitutes a denial of justice (Art. 46 of the RF Constitution).

5. According to Art. 6 § 1 of the Convention for Protection of Human Rights and Fundamental Freedoms, “*everyone charged with a criminal offence is entitled to a fair ... hearing ... by an independent and impartial tribunal.*”

The Russian Constitution also declares fairness as a basic idea (see the Preamble) and guarantees to everyone judicial protection of his/her rights and freedoms.

The deliberate distortion of defence arguments by the courts to make it easier to refute them, shifting of the burden of proof from the prosecution to the defence and violation of the right to equality of all people before the law and in the court of law demonstrate that M.B. Khodorkovsky’s right to a fair trial of his case by an independent and impartial tribunal was not secured.

The above violations of the criminal procedural law and norms of the international treaty committed by the judge and incompliance of the conclusions of the court with the facts of the case constitute grounds for repealing of the judgment under appeal by the cassation instance court.

Based on the foregoing, pursuant to Art. 354-356 and 379 RF CCP, [I hereby]

REQUEST:

1. That the judgment of Judge L.V. Naryshkina from the Ingodinsky District Court of the City of Chita of 14.03.2008 on the appeal of lawyer B.B. Gruzd on finding unlawful actions (failures to act) of the investigators be repealed.

2. That the material be sent to a first instance court for a new hearing by another panel of judges.

3. That [I] be notified about the time and the place of the hearing of the cassation instance court since I intend to attend it.

Note:

Upon familiarization with the court hearing transcript, which has not been produced yet, the defence will submit a supplementary cassation appeal.

Annexes:

1. Authorization of B.B. Gruzd (1 copy)
2. Copy of S.K. Karimov's notification of 27.12.2004;
3. Copy of investigator V.N. Alyshev's order "to file a motion on prolongation of the period of preliminary investigation" of 15.01.2008;
4. Copy of a judgment of Judge Yu.L. Romanov from the Kirovsky District Court of the City of St. Petersburg of 27.11.2007 in case No. 3|7-135;
5. Copy of a cassation ruling of the Judicial Collegium for Criminal Cases of the St. Petersburg City Court of 05.02.2008;
6. Copies of this appeal for the parties to the hearing (2 copies without annexes 1-3).

24 March 2008

[signature] /B.B. Gruzd/