

**Radio Interview with Yuri Schmidt
Lawyer for Mikhail Khodorkovsky
11 August 2005
Ekho Moskvyy Radio**

Anchor: I would like to start by asking you about the possible participation of Mikhail Borisovich Khodorkovsky in the by-elections for the State Duma, which you have officially announced, quoting Mikhail Borisovich himself.

Schmidt: Yes, it's true that during my meeting with Mikhail in the pre-trial detention center I asked him if he was thinking of running for the Duma. I needed to know how to comment on this topic if the question was asked of me. He said that he has indeed been approached by people with such a proposal, and that he's been contemplating it. He also mentioned that he was leaning towards accepting it barring certain people's opinions.

Anchor: Such as?

Schmidt: No, he didn't name them. And I didn't ask him too many questions because I didn't want to complicate the theme. But I certainly asked myself, "Doesn't he believe that it could actually work and that he would be elected to the Duma?" He said that he did not think for second that he would be elected. Moreover, he was convinced that his very consent to run would bring further reprisals against him. But he believes it is the right thing to do, and I share his opinion.

Anchor: Yuri, do I understand this to mean that to some extent this is just a demonstration? Is there a legal basis for it? For a person in jail to state that he will run for office . . . what will happen next?

Schmidt: It's very simple. Under Russian law, a person who has been convicted, and whose sentence has come into force, cannot be elected.

Anchor: Has his sentence come into force?

Schmidt: No, the sentence has not come into force. But precisely at the time when the information on Khodorkovsky's plans became known, which was during a meeting with the lawyers, all the lawyers received notice that they had to urgently read the minutes of the court session and submit their remarks before August 25. I believe that the first reaction to his initiative will be to speed up the progress of the case at the Moscow City Court, so that after the sentence comes into force the question of his running for the Duma would be closed.

Anchor: Does the fact that an appeals process is under way have anything to do with the coming into force of the sentence?

Schmidt: Of course, we are preparing additional appeals which, together with the case, will first be studied by the judges at the Criminal Cases Collegium of the Moscow City Court, and then the appeals will be officially considered.

Anchor: What has Khodorkovsky done to cause the authorities to move him to an 11-person cell, to deprive him of newspapers and to take some other repressive measures against him?

Schmidt: Nothing could be easier to answer. Of course, it is connected with the publication of his article "A Turn to the Left." The article, as far as I remember, provoked a very unfavorable reaction towards the Kremlin, and the Kremlin is aware that there is no right-wing opposition in the country (at least no organized opposition), while the left-wing opposition and leftist sentiments are fairly strong in society. Khodorkovsky formulated these sentiments rather convincingly, and he was not forgiven for doing so.

As soon as they became aware of the first reaction from his attorneys, the head of the Federal Penitentiary Service, Mr. Kalinin, stated that his move was an internal affair of the pre-trial detention center. He explained that an inmate can be moved from one cell to another by decision of the chief, and they did so because the whole level of the cell that he was in was under repair.

But I must disappoint Mr. Kalinin and tell our listeners that Khodorkovsky was not moved from one cell to another, he was moved to a different detention center.

Anchor: A different building.

Schmidt: It even has a different number. So, the chief could not have decided to have Khodorkovsky transferred to a different institution. As for repairs, you know that toward the end of the hearings at the Meshchansky court pickets in defense of Khodorkovsky were taking place every day.

Anchor: And then they started repairs?

Schmidt: Quite right, it just happened.

Anchor: On Kalanchevskaya?

Schmidt: Yes, on Kalanchevskaya Street. And we were told that they had nothing to do against pickets, that the picketers could move half a kilometer away from the court building and picket to their hearts' content.

Anchor: And the transfer of Platon Lebedev to another cell is connected to some mysterious circumstances, too.

Schmidt: I think this was done as a diversionary move as if to say: Look, we have moved not only Khodorkovsky, but also Lebedev. I wouldn't be surprised if they started repairs there, too.

Anchor: Ripping up the asphalt is no problem.

Schmidt: Ripping up asphalt is much more complicated.

Anchor: A question from Larisa: "Do the cellmates pose a threat to Mikhail Borisovich's life?"

Schmidt: You noticed that I took some time to think before answering that question. I have long feared for his life. And even this transfer. You know, all sorts of things happen in pre-trial detention centers. We cannot be sure how some bandit may behave. I have long been in fear of his life.

Anchor: A question from Yelena from Primorye Territory. "What are the avenues to be explored for the liberation of Khodorkovsky? Do you see them and how long will the Strasbourg court proceedings last?"

Schmidt: Unfortunately, the proceedings at the Strasbourg court always take a long time. As far as I know, a group of lawyers is preparing a full complaint to the Strasbourg court. It will be filed after all the national means are exhausted, that is, as soon as the appeals court considers the case. But it is hard to predict how the case will develop and at what speed.

Anchor: A question from Tatyana, who lives in the Urals: "Do you think there is time for the sentence to come into force after the appeal is considered by the Supreme Court of the Russian Federation?"

Schmidt: You can interpret that phrase in several ways. So far, everything is going more or less in line with a usual scheme.

Anchor: A question from the Internet from the Southern Federal District: "Don't you think that the sweeping majority of the population believes that Khodorkovsky is a financial swindler, and this is the voice of the people who are known to be the voice of God?"

Schmidt: Life and history have many times proved that the people are not always right. One may recall what Vladimir Putin said when he approved the old new national anthem: "Perhaps we are wrong together with the people." The point is that to draw conclusions on such delicate matters as a criminal case, especially such a complex criminal case, one has to be well informed.

Anchor: Do you mean the Khodorkovsky.ru website?

Schmidt: Yes, it publishes documents of the defense. It publishes statements by Khodorkovsky and Lebedev, so people would be able to draw conclusions based on facts. Personally, I insist that the Khodorkovsky case is a fake, deceit. He is not a criminal.

Naturally, our opportunities to provide evidence and prove this to the wide layers of the population are limited, as we do not have information channels. Naturally, we are making statements, we have a website, we have you. I am always ready to come here.

In the court I made an address on one episode which I dealt with. It was charges of dodging the income tax paid by individuals. My address lasted for two hours. You can read my address on the Internet. I think that any individual having read this address will see that the charges are groundless.

Anchor: A question from Nina: "Under the law, there should be at least four square meters per inmate in a cell. Has this been observed with respect to Khodorkovsky?"

Schmidt: That norm was observed in the old cell. As for now, I don't know. There are 11 inmates there, meaning that the cell should be at least 44 square meters large. This is the standard requirement approved by the United Nations.

I know that the authorities have tried to observe the decorum with respect to Khodorkovsky so far. They have not held additional interrogations. The issue of torture has not been raised. He has been lucky in this respect, because huge numbers of people in this country have been held in conditions which can only be describes as torturous. Khodorkovsky is a rare exception.

Anchor: A question from Lydia: "Why have you decided that people will vote for Khodorkovsky? He has been sentenced and we do not need MPs like that."

Schmidt: It is wonderful that there are people having their own opinion. Time has changed a lot. I can imagine that Lydia, perhaps, always readily voted for the only candidate there was in Soviet times. She came to vote and was among those 99.9 percent having voted for that candidate.

So, Lydia, do not vote for Khodorkovsky. Let those who believe, who can think, analyze, rather than yield to one-sided propaganda, vote for him.

Anchor: A question from the Internet. "While not focusing on the level of guilt of your defendant, what could you answer to the following: your defense has proved your lack of professional skills, you are short of arguments, and you have appealed to the public shouting: The authorities violate the law, the Constitution, and we have the Basmany justice. Second, your favorite trick is putting pressure on the court and prosecutors via appeals in the press, made in advance. Had there been a rule-of-law state here, like in America, you would have been stripped of the right to work as a lawyer, as you have violated ethical rules. Is this not the reason why most people do not like you and your defendant?"

Schmidt: I cannot recall when I was short of arguments in the Khodorkovsky case. But it is true that I have often had no chance to voice them publicly. I have quite often been short of time to do that. This is the first point.

Second, throughout my life I have always preferred to work only professionally and my contacts with the press in many cases, loud cases in the past, were an exception to the rule. But the thing is that the executive has never acted so fiercely, using its information potential, as in the Khodorkovsky affair.

My public statements have always been aimed at defense, rather than offense. Had I believed that our court is independent, had I been able to get the floor, say, during round table meetings with the participation of the prosecution and the defense, I could have avoided those public statements. But there was nothing of the kind, and I have to publicly reply to public challenges. This is what I have done.

As for those who like me and those who dislike me, frankly, I have not tried to convince everyone to like me. Moreover, I would rather not let this happen.

Anchor: Khodorkovsky has been moved to a new cell. Does this impair his ability to get acquainted with the documents?

Schmidt: You know, we were somewhat discouraged when we, the defense lawyers, found out about this. Yesterday, when I visited Mikhail, I expected to see him somewhat depressed, but this was not the case. When I told him that we would take certain steps, as he needed to work, read documents, write the cassation appeal, he said: "I am not better than the rest. I do not expect any preferences or any exceptions. I will work under the current conditions." He was absolutely calm, and I did not hear any complaints.

Anchor: I understand that you try to be very accurate and have weighed your words before pronouncing them. Here are four pages of questions printed out from the Internet. I will not read them all out, but I can draw the conclusion that the people are divided. I have read the most negative questions to you. I have not tried to spare your feelings.

There also are calls to vote for Khodorkovsky, rather than questions. But it is clear that it is a political action, and from the point of view of participation in elections, it is not too functional. Why should this be needed under the current conditions when he is held hostage, when Svetlana Bakhmina and other people have been held hostage?

Schmidt: I can tell you that Khodorkovsky has tried to keep his tone down in the press and in the court to a great measure due to the fact that he feels pain for those who have been held hostage by the authorities' hatred personally to him, Khodorkovsky, and the authorities' greed, their willingness to seize assets they have not created. But life has shown that this was not the end. They have held Svetlana Bakhmina in custody for several months and have regularly extended her detention. They think up new charges against Pichugin. How long will this continue? After all, you can't keep silent

indefinitely. I personally was telling him that his good behavior didn't do any good to anyone and that, after all, he could be himself and behave as he has when he said he would agree to run for the Duma.

Anchor: A question from Rudolf in Memphis: "Was the sentence on Lebedev and Khodorkovsky accompanied with a determination with regard to some agency of the tax service? Can the convicts sue tax officials who failed to notify them that they were in arrears on their taxes? Which dereliction on the part of the officials had such dire consequences for Lebedev and Khodorkovsky?" I must say that the author of that question is himself a lawyer.

Schmidt: I just wanted to praise him for his remarkably good and precise question, and in fact, we have repeatedly raised it during the course of preliminary hearings in the court. It is a paradox if ever there was one -- a person charged of tax violations who has never evaded tax audits. Tax audits followed one after another over a long period of time, both scheduled and unscheduled. And there were no complaints that he was in arrears on his taxes.

Anchor: I heard yesterday that there were about 500 audits a year. Is this a real figure?

Schmidt: If you take the whole company and all its structures that must have been the figure. Liability arose under the law when a person failed to hand in his tax returns or misstated his incomes and expenditure thereby diminishing the taxable profits. No such charges were brought against Khodorkovsky because he had submitted absolutely accurate data on his incomes. The question about the kind of activities that generated these incomes was not on the table at all. Everything was done strictly according to the law. So, if a simplified system was used from the point of view of the prosecutor's office and now also the law court is wrong. Who applies this or that system? The taxpayer himself? No, it is applied by the tax agencies and they should be liable. In response to the question -- naturally there were no special determinations regarding tax agencies, and it is unrealistic in this country to raise the issue of having them pay damages to the convicted person.

But I do not rule out that we will work on that simply in order to prove and demonstrate to the public the illegality of what has been done.

Anchor: What reaction do you expect to the appeals?

Schmidt: What reaction from the authorities? I think the authorities, when embarking on this affair, expected it to be a one-way game, a repression disguised as an adversarial court process.

They expected to be able to get away with anything. If they wanted to adjust the sentence to make it softer, they would just issue such instructions; if they wanted to leave it unchanged, they would have the complaints dismissed; if they wanted to bring one more charge, they would do it; if they wanted to bring five more charges, they will find a way.

Anchor: So, you have your job cut out for you.

Schmidt: I recall a wicked question which I have already answered. When I took up a political case, I realized that I was addressing the court, but that I had no way of knowing whether it reached the ears of those who really decided what the sentence would be. At least there is still an opportunity to tell the public about it, and so I don't think that my work has been wasted.

By the way, at 10:00 today I couldn't tune in to your station and it gave me cold feet. I called the radio station, and I was told that they had some minor maintenance work to do. I thought to myself that one day we might switch on our radios and hear nothing. Mine is always tuned in to the same waveband -- I press the button to switch between Ekho Moskvyy and Radio Liberty. I keep my fingers crossed that it doesn't happen.

Anchor: It will never happen. And with us in the studio was lawyer Yuri Schmidt.