

To the Qualification Commission of the Chamber of Lawyers of the City of Moscow

From Lawyer K.A. Moskalenko

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EXPLANATIONS

Having studied the representations of the Procuracy-General of the RF and the Administration of the Federal Registration Service for Moscow on initiating disciplinary proceedings in relation to me, I have come to the conclusion that they are completely untenable.

1. Conclusion that a lawyer is obligated to participate in familiarization with case materials is without grounds.

1.1. On 30 January 2007, the lawyer was first summoned by an investigator of the Procuracy-General of the RF for participation in investigative actions in the city of Chita. In this regard, the message about the summoning was received in the evening of 30 January 2007 for an appearance on 31 January 2007. This ruled out even the theoretical possibility of arriving in the city of Chita by the period indicated in the notice (in detail in the lawyer's statement – attachment 1).

1.2. Subsequently this style of work by the investigative group of the Procuracy-General of the RF was repeated many a time (in detail in the complaint to the Basmany District Court of the city of Moscow – attachment 2).

1.3. On 6 February 2007, M.B. Khodorkovsky wrote an application, by which he gave notice to the investigation about how he does not require the assistance of lawyer K.A. Moskalenko for familiarization with the case, the subject matter of her work is representing his interests in the European Court. On that same day, 6 February 2007, the application was accepted by investigator Yurzditsky, concerning which the investigator made an entry on a copy of M.B. Khodorkovsky's application, without voicing any objections in this regard (attachment 3).

1.4. In addition to this, the investigator signed for the acceptance of an analogous application from lawyer K.A. Moskalenko, likewise without voicing any objections (attachment 4).

1.5. The opportunity to make use of the services of one or another lawyer during familiarization with the materials is a right, and not an obligation, of an accused. In the practical sense, the only thing that has meaning is that the work of familiarization with the case materials be organized in such a manner that this would not lead to the protraction of the process of familiarization (Art. 217(3) CCP RF).

1.6. In addition to this, pursuant to Articles 47(4) and 215(1) of the CCP RF, familiarization with the materials of a criminal case is a right, and not an obligation, of an accused.

1.7. All the more so, when two or more lawyers are participating in a case, the accused retains the right of choice as to with which of them he wishes to familiarize himself with the case materials.

2. Unlawfulness of conducting investigative actions in the city of Chita.

2.1. The very fact that investigative actions in the case of M.B. Khodorkovsky are being conducted in the city of Chita was and is unlawful, about which the defense of M.B. Khodorkovsky has raised the question on numerous occasions, submitting applications and complaints to the appropriate instances, including judicial bodies. Lawyer K.A. Moskalenko had informed the Prosecutor-General of the RF about this in a telegram dated 16 February 2007 (attachment 5).

2.2. The position set forth above has at the present time been fully sustained by the Basmanny District Court of the city of Moscow and the Moscow City Court.

On 20 March 2007, the Basmanny District Court of the city of Moscow issued a judgement whereby the conducting of the preliminary probe with respect to the criminal case in relation to M.B. Khodorkovsky in the city of Chita was found to be unlawful (attachment 6).

2.3. On 16 April 2007, by a cassational ruling of the Judicial Collegium for Criminal Cases of the Moscow City Court, the judgement of the Basmanny District Court of the city of Moscow of 20 March 2007 was left without change and entered into legal force (attachment 7).

3. Attempts at pressuring lawyers, organization of actions of intimidation.

3.1. A serious obstacle to journeys by lawyers to the city of Chita was the fact that arbitrariness was permitted in relation to them under the pretext of ensuring aviation security. A telegram from lawyer K.A. Moskalenko to the name of the Prosecutor-General of the RF dated 16 February 2007 indicated this (attachment 5).

3.2. They subjected the lawyers to detention in custody, demanded that they present all documents before the flight, hindered their passage to the airplane, inspected all belongings and documents under the guise of a pre-flight check, and carried out the filming of documents with the use of video recording. Surveillance video filming took place as well in relation to the lawyers themselves (in detail about this in the complaint to the Procuracy-General of the RF – attachment 8).

3.3. On 7 February 2007, a threat was voiced in relation to lawyer K.A. Moskalenko of removing her from the Chita – Moscow flight in the event of insubordination. This threat was voiced by the head of the security service of the airport of the city of Chita in the presence of witnesses, among them television journalists. These actions were undertaken in connection with the fact that an investigator of the Procuracy-General, accompanied by unknown persons who refused to introduce themselves, demanded that the lawyer sign a statement of non-disclosure of investigation data with respect to case No. 18/432766-07. The demand put forward was absolutely unlawful.

3.4. The lawyer's position with respect to this was set forth on the statement form, a copy of which was not issued, while the Procuracy-General of the RF did not present a copy of this document. In the document, the lawyer recorded the following: *"I consider unlawful the taking from me of a signed statement outside of work time, at 8:30 in the airport under the threat of being removed from a flight. I declare the following on the merits of my objections. I never was familiar with the materials of the criminal case under the No. 18\432766-07, indicated in the given document. I was summoned to the city of Chita with respect to another criminal case.*

Detailed objections will be sent out without delay to the address of the Procuracy-General of the RF.”

4. Reason for introducing a representation on depriving [me] of the status of a lawyer – a continuation of activities with respect to intimidating M.B. Khodorkovsky’s lawyers.

4.1. A complaint against all the unlawful actions indicated above originally was submitted to the Procuracy-General on 08 February 2007 (attachment 8).

4.2. In connection with the absence of a suitable reaction on the part of the Procuracy-General, subsequently a complaint was presented to the Basmany District Court of the city of Moscow, which complaint at the present time is found at the stage of examination (attachment 2).

4.3. We believe that it was after the submission of this complaint that the Procuracy-General of the RF undertook its actions with respect to intimidating and at the same time discrediting lawyer K.A. Moskalenko.

5. Conclusion.

5.1. I consider that pursuant to the law I carried out and continue to carry out the defense of M.B. Khodorkovsky. A lack of good faith in carrying out the defense I did not allow. No claims on the part of my defense client have ever been expressed.

5.2. I ask the qualification commission to issue an opinion on the groundlessness of the representation introduced.

5.2. At the same time I ask to bring your attention to the inadmissibility of the use by bodies of state of the procedure of disciplinary proceedings in relation to lawyers with the inadmissible objective of intimidating the lawyers.

Attachments:

1. application by lawyer K.A. Moskalenko dated 30 January 2007;
2. complaint to the Basmany District Court of the city of Moscow;
3. application by M.B. Khodorkovsky dated 6 February 2007;
4. application by K.A. Moskalenko dated 6 February 2007;
5. telegram from lawyer K.A. Moskalenko to the name of the Prosecutor-General of the RF dated 16 February 2007;
6. judgement of the Basmany District Court of the city of Moscow dated 20 March 2007;
7. cassational ruling of the Judicial Collegium for Criminal Cases of the Moscow City Court dated 16 April 2007;
8. complaint to the Procuracy-General of the RF dated 08 February 2007.

Lawyer

K.A. Moskalenko

11 May 2007