

**To the Judicial Collegium for Criminal Cases
at the Chita Oblast Court**

B.B. Gruzd, defence lawyer for defendant
M.B. Khodorkovsky

**CASSATIONAL APPEAL
(extract)**

On 01.08.2008 the Ingodinsky District Court of the City of Chita (Judge V.L. Kaminsky) partially satisfied the complaints (both the original and the additional ones) lodged by defence lawyer B.B. Gruzd, acting on behalf of defendant M.B. Khodorkovsky, about unlawful actions (lack of action) of the investigators committed in the process of investigation of criminal case No. 18/432766-07 and upon submitting to the defending party of the case file materials for familiarization.

The court recognized actions (lack of action) of the investigators in the form of *“failure to notify M.B. Khodorkovsky and his defence lawyers on the extension of the term of investigation on criminal cases No. 18/325556-04, No. 18/325501-04, providing for familiarization of 16 volumes of the materials of criminal case No. 18/432766-07 which had no anagraphs of the documents attached, providing for familiarization of the materials of criminal case No. 18/432766-07 some of the sheets of which are partially unreadable (volume 77, c.f.s 2-256)”* unlawful and obligated the investigators in charge of the criminal cases to ensure for the remedy.

The remaining part of the complaints lodged by defence lawyer B.B. Gruzd was left unsatisfied.

This decision in that part of it which dismisses the complaint lodged by the defence lawyer, is unlawful, unsubstantiated (groundless) and is subject to reversal due to the following reasons:

1. According to the court, it *“is not entitled to give legal treatment to the actions of the suspect, the defendant, or to make assessment of the qualification of the incriminated offence, or the evaluation of the evidence since all these issues are due to be settled in the course of the pre-trial investigation and the court trial of the criminal case”*.

First, the defence in its complaints has not asked *“to give legal treatment to the actions of the suspect, the defendant, or to make assessment of the qualification of the incriminated offence”*.

Second, pursuant to the legal positions of the Constitutional Court of the RF, the court was obligated to investigate and evaluate the arguments of the complaints about unlawfulness and groundlessness of the actions (lack of action) and the decisions of the investigator and of the evidence confirming those arguments.

Refusal of the court to do so is the refusal of the access to the justice.

The right to access to the justice, by implication of Articles 55 (part 3) and 56 (part 3) of the Constitution of the RF, **shall not be subject** to restriction since this may, under no circumstances, be stipulated by the need to achieve the goals specified by the Constitution of the RF.

Deprivation of citizen’s right to apply for judicial protection in order to assert his or her rights and liberties contradicts the constitutional principle of protection by the state of a person’s dignity (Art 21 of the Constitution of the RF), from which it follows that a person in his or her relationship with the state shall have the right to defend his or her rights and liberties by any means not prohibited by the law and to dispute with the state represented by any of its bodies (Art 45 part 2 of the Constitution of the RF) (*See Decree of the Constitutional Court of the RF of 03.05.1995*).

2. The court indicated that in order to resolve the issue of the validity, legality or unlawfulness of the decision of 15.11.2007 ruled by the investigator in connection with the refusal to grant a motion *“it might be reasonable in this court session to deal with the issues connected with the collection, examination and valuation of the evidence which, as has been noted by the court, are performed by the investigator within the powers granted to him by the Code of Criminal Procedure of the Russian Federation, this is his droit, and **it may not be the subject of the judicial review pursuant to Article 125 CCP RF, and, hence, the claims in this part may not be satisfied by the court”** (highlighted by me, B.G.).*

This is not true.

The provisions of Article 125 CCP RF, **do not deprive** the participants in the criminal proceedings of their **rights** to appeal against the decisions and the actions (the lack of action) of the investigator **“to consider motions filed in the process of familiarization with the case file materials and to appeal against the decisions taken in connection with those motions, but those provisions will specifically vest these rights”** (*Decree of the Constitutional Court of the RF of 08.12.2003 No. 18-P*). *Decrees of the Constitutional Court of the RF of 23.03.1999 No. 5-P; of 08.12.2003 No. 18-P*

Pursuant to the Ruling of 24.01.2008 No. 63-O by the Constitutional Court of the RF: *“Stipulating by Art 38 part 2 paragraph 3 of the CCP RF the authority of the investigator to direct on his own the course of investigation, to take decisions on the performance of the investigative or of the procedural actions... the law maker at the same time **does not exclude the need for him to carry out in the process of the criminal prosecution the whole range of stipulated by the procedural criminal law, specifically by Articles 7, 11, 14 и 16 of the CCP of the Russian Federation, measures aimed at protection of the rights and liberties of man and citizen in the criminal court proceedings. Checking of the legality and validity** of the investigator’s actions and decisions made based on this provision on a specific case **shall be conducted by the regular courts (Article 125 CCP of the Russian Federation)** (*Decree of the Constitutional Court of the RF of 29.06.2004 No. 13-P*)”*.

The aforementioned violations of the procedural criminal law and of the standards of international convention (law) committed by the court and resulting in the unjust and unsubstantiated court decision (Art 381 CCP RF), as well as inconsistency of the conclusions by the court with the actual circumstances of the case (Art 380 CCP RF), shall serve grounds for the reversal of the court decision under appeal by the reviewing authority (court) (Art 379 paragraphs 1, 2 part 1 CCP RF).

Pursuant to the above, and using Articles 354-356, 379 of the CCP RF as guidelines,

I HEREBY REQUEST TO:

- 1.**Reverse** the Ruling of the Judge of the Ingodinsky District Court of the City of Chita V.L. Kaminsky of 01.08.2008 in the part of it which refuses to satisfy the claims of the defence lawyer.
- 2.Send the materials for a new trial by a different composition of the court of primary jurisdiction.

11.08.2008

Defence lawyer

B.B. Gruzd