
THE PROSECUTION OF MIKHAIL KHODORKOVSKY

Over the past four years, Robert Amsterdam has been defending political prisoner Mikhail Khodorkovsky—the former CEO of Russian oil giant Yukos. Once Russia’s richest man, and one of the country’s highest-profile opponents of President Vladimir Putin, Mr Khodorkovsky is now widely acknowledged as the victim of Kremlin-inspired persecution and a political prisoner of President Putin’s.

In 2003, Mr Khodorkovsky was arrested along with his business associate, Platon Lebedov, on charges of fraud and theft of Russian state property. Mr Khodorkovsky was increasingly considered a source of political opposition to the regime, and Yukos’ success was an unwelcome source of competition for state-owned energy companies. Ultimately, the elimination of Mr Khodorkovsky as a political opponent and as corporate head of Yukos, and the eventual confiscation of Yukos itself, were politically engineered, and had little to do with law.

During what became Russia’s largest post-Soviet trial, Mr Khodorkovsky was subjected to grave injustices in the interpretation and application of Russian law, and the Kremlin concurrently pursued a fiscal attack on Yukos based on unjustifiable tax charges. In his talk, Mr Amsterdam will show that many of these violations were so erroneous they excluded any semblance of good faith from the proceedings and revealed the state’s political motives.

The Kremlin’s campaign against Mr Khodorkovsky and Yukos was the critical turning point—violating not only Russian law, but also fundamental principles of international law. The onslaught of the state’s legal machinery against Mr Khodorkovsky was so unfair that it constituted political persecution. In both the criminal and tax proceedings the courts lacked independence, did not adhere to the principle of equality before the law, and committed multiple, severe violations of procedural and substantive law, such as:

- Presumed guilt, collusion of state authorities, and retroactive tax liabilities
- Denial of the right to an independent and impartial tribunal
- Denial of the right to equality before the law
- Denial of the right to release pending trial
- Denial of the right to effective legal assistance
- Unwarranted raid on defence counsel’s office
- Denial of the right to disclosure of the prosecution’s case
- Denial of the right to call witnesses and the right to examine expert witnesses
- Ongoing unlawful investigation during trial
- Denial of the right to exclude out-of-court statements
- Denial of the right to be heard and of the right to a reasonable amount of time to prepare and present
- Disproportionate punishment

In 2005, Mr Khodorkovsky was sentenced to eight years in a Siberian prison, and has been repeatedly denied rights afforded to him as a prisoner under Russian and international law. These include obstruction of lawyers, cancellation of a family visit, degrading treatment and torture, and a series of unwarranted reprimands.

In February 2007, a new string of charges, for money laundering and embezzlement, was brought against Mr Khodorkovsky. The timing of the new charges was not accidental: Russia’s image abroad had been badly tarnished by a series of highly publicised murders, both in Moscow and in London, while there is intense behind the scenes jockeying for favour and power inside the Kremlin as the 2008 change in presidential leadership nears. The fresh case means that Mr Khodorkovsky will be unable to support democratic opposition parties in December’s Duma elections, or in the 2008 “presidential coronation”.

The Khodorkovsky Affair is not an isolated example of the dangerous economic, political and foreign policy developments which are now apparent in Russia; nor can it be regarded as a purely internal Russian matter. The campaign has played out in the context of deepening authoritarianism in Russia. The Russian political system is mutating rapidly, with serious implications for the rule of law in Russia, jeopardising the protection of human rights and legal guarantees of private property, including foreign investments.

So far, Western governments have shied away from anything more than tepid expressions of concern over the Khodorkovsky case—a shocking surrender to sinister forces within the Russian leadership, and an overt signal to them that their belligerent authoritarianism will be tolerated, in exchange for preferential treatment in energy relations. This is a dangerous signal to send to a regime that has taken to wielding power with recurring disregard for both Russian and international law.

ABOUT ROBERT AMSTERDAM

Robert Amsterdam is the founding partner of the Toronto-based international law firm Amsterdam & Peroff. In his 25 years of practice, Amsterdam has overseen numerous high profile cases including shareholder disputes, corporate restructuring, fraud and asset recovery, corporate and human rights advocacy, and complex commercial litigation. He is also a specialist advisor on political risk. Amsterdam has worked in a variety of emerging markets, including Russia, Hungary, Nigeria, Venezuela and Guatemala, representing clients such as Price Waterhouse Coopers and the Four Seasons Hotel Group, among others. In 2003, he was retained by the former CEO of the Yukos Oil Company, Mikhail Khodorkovsky.

Amsterdam was included in *The Lawyer's* 2005 "Hot 100," was named "Lawyer of the Week" by the *Times of London*, and has been profiled by *BusinessWeek* and other publications. He has appeared on the Charlie Rose Show, Fox News Channel, CNN, CNBC, and the BBC. *Canadian Lawyer* describes him as "one of the few lawyers in the world [good at] taking on the state when the state starts acting like a criminal."

An expert speaker on international law, foreign affairs and energy, he has delivered speeches at such organizations as the Cato Institute, the Carnegie Endowment, Chatham House, and the International Commission of Jurists, and has debriefed government and NGO leaders on a variety of political, legal, and business issues. He has published opinion articles in the *Wall Street Journal*, *International Herald Tribune*, *Financial Times*, *Telegraph*, *Guardian*, *National Law Journal*, and the *New York Sun*, among others.

Amsterdam is a member of the Canadian and International Bar Associations. He earned his BA from Carleton University in Ottawa, and studied law at Queen's University in Ontario (LLB).