Politics of the Yukos Affair

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Prologue

During the 1990s in Russia, a small group of financially shrewd and, often, ruthless young men built industrial empires from privatized state property. These properties were obtained at fire sale prices under the El'tsin administration.1 The group came to be called oligarchs, a term signifying the great wealth, power, and influence they had acquired. In the process of amassing their fortunes, however, the oligarchs cut many legal corners, trampled diverse laws, and corrupted numerous state and judicial officials. All, thus, became potentially legally vulnerable should the Russian state choose to take action.

Early in the Putin administration, the two most politically influential oligarchs, Boris Berezovsky and Vladimir Gusinsky, were relentlessly hounded and pursued by the state until both chose exile over prison.2 In 2003, Mikhail Khodorkovsky, the wealthiest and most politically active oligarch, came into the state’s sights. He became the object of criminal prosecution based on the Procuracy’s extensive files of his legally questionable past behavior in the process of building Yukos, his vast oil empire. After proceedings of nearly two years, Khodorkovsky was convicted, sentenced, and incarcerated in a legal process marred by myriad and often egregious procedural and other violations committed by Russian law enforcement.3

* The author wishes to dedicate this essay to his long time colleague, collaborator, and friend Peter B. Maggs, distinguished holder of the Carney Chair in Law at the College of Law, University of Illinois at Urbana-Champaign.


3 The Khodorkovsky defense team maintains an elaborate web site which has tracked the proceedings in considerable detail on a daily basis. See: <http://www.khodorkovskytrial.com> (hereinafter “Yukos Web Site”).
A discussion of the Yukos affair follows as a study in “illegitimate wealth facing arbitrary power”.  

**The Past Revisited**

For an old hand at Soviet legal studies, the Yukos affair of 2003-2005 triggered a troubling sense of *déjà vu*. In post-Soviet Russia—where the commitment to the development of the rule of law has been marked by a number of forward and far reaching legal reforms—the trial of Khodorkovsky and Platon Lebedev, a partner, which concluded late spring 2005, can only be viewed as a regressive step.

One is reminded of the concept of “dual Russia”, but with an ironic twist, to wit, Khodorkovsky—the principal defendant, heretofore the wealthiest and arguably the most influential private citizen in the country—had been expelled from Official Russia and cast into the depths of Popular Russia. Similarly, Stalin’s prosecutor Andrei Vyshinsky comes to mind, in particular the dual policies he simultaneously administered, directing the development of the Soviet legal system while presiding over conspicuous displays of political justice. In effect, in the Yukos affair, we have witnessed once again prerogative authority manipulating the normative process as political expediency has trumped legality in a classic exercise of *ad hoc* legal policy or the circumvention of procedural and substantive due process of law.

The routine is by now familiar from past experience—a suitable target for selective prosecution was chosen, and a political trial mounted under the guise of an ordinary criminal proceeding. The whole affair took on the

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8 See E. Fraenkel, *The Dual State*, London 1941. The author is indebted to the late Darrell P. Hammer for introducing him to Fraenkel’s concept which he later applied to the study of Soviet law.