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Introduction

I want to thank the U.S. Helsinki Commission for the opportunity to submit a written testimony for the hearing on June 23rd entitled, "The Medvedev Thaw: Is it real? Will it Last?" As you are well aware, human rights in Russia is in decline and people are suffering. I was honored to brief Members and staff of the U.S. Helsinki Commission in September 2007, and I would like to take this opportunity to provide you with an update on the current state of human rights in Russia as it relates to adherence to the rule of law and an independent judiciary.

My name is Karinna Moskalkenko and I am the founder of the International Protection Center, an organization that protects the human rights of defendants in Russia before the European Court of Human Rights. My clients include, among others, the families of the murdered journalist Anna Politkovskaya, political activist Garry Kasparov, the American victims of the Nordost Theatre siege in Moscow and the imprisoned Russian businessman Mikhail Khodorkovsky.

Human rights in Russia is not getting better, it is getting worse. Despite President Medvedev's proclamations, the reality for people on the streets, in the courts or in prison, is that human and civil rights are severely compromised, if they exist at all. The justice system is not impartial and does not seek to uphold the rights of defendants, but instead, it actively works in a political fashion to subvert the rule of law and remove rights. This situation must change.

While I could talk about many individual cases, I would like to address one in particular that is occurring as we speak and symbolizes all this is wrong with the Russia legal system today - the case of Mikhail Khodorkovsky, former head of once Russia's largest privately owned oil company YUKOS, who is now on trial for the second time in a clearly politically inspired case. He is not the only one suffering. Many people who were not as wealthy or well known are suffering with him, but the high profile nature of his case is a warning to everyone.

History of Mikhail Khodorkovsky and the YUKOS Affair

On October 25, 2003, Mr. Khodorkovsky was arrested at gunpoint by FSB special forces on trumped-up charges of tax evasion, fraud and embezzlement. After a yearlong trial, Mr. Khodorkovsky was found guilty in 2005 and sentenced to 9 years imprisonment along with his business partner Platon Lebedev.

In August 2008, Mr. Khodorkovsky was eligible for parole after serving five years in prison. However, his application was rejected on the flimsy pretext that he had allegedly refused vocational training in sewing and had failed to keep his hands behind his back during a walk. Just before his parole hearing, Mr. Khodorkovsky was punished with 12 days of solitary confinement for a previously approved interview with Esquire Magazine.

On March 31, 2009, both Messrs. Khodorkovsky and Lebedev were put on trial for a second time, in what is viewed by outside observers as yet another politically inspired trial. This second trial is based on flawed charges and violates the principle, if not the spirit, of double jeopardy and is baseless. It is designed to keep them in jail indefinitely.

Rule of Law and Violations of Due Process

Throughout the first trial there were repeated violations of Mr. Khodorkovsky's legal, civil, and human rights. Witnesses were intimidated, important evidence was excluded, and Messrs. Khodorkovsky's and Lebedev's access to their own lawyers was severely limited, even prohibited at times. Even I have been victim to several types of intimidation, including the threat of disbarment by the Prosecutor General in Moscow apparently for negligently defending my client. I was very grateful for the show of support by leading Members of the U.S. Congress who sent a letter in May 2007 to President Putin urging him to call on the Prosecutor General to withdraw the request for my disbarment.

The second trial showcases the most recent series of violations against legal due process and Russia's full extent of "legal nihilism." As outlined in a stay motion filed by the defense, the bill of indictment contains major errors, and does not comply with legal requirements. There is also evidence of suborned testimony, illegal searches and seizures and even torture of potential witnesses by the prosecutors during the investigative period to obtain the testimony and "evidence" used to support the charges. Despite these blatant violations, the court dismissed the stay motion and ruled that the trial would begin March 31, 2009.

The violations that occurred during the first trial and now continue throughout the second trial resulted in numerous applications to the European Court of Human Rights, of which I am currently defending. The first ruling thus far was a victory for Platon Lebedev. On October 25, 2007, the European Court of Human Rights ruled that Mr. Lebedev's rights to liberty and security were violated during his arrest and subsequent pretrial detention. In a similar decision, the European Court supported the admissibility of the Khodorkovsky v. Russia case.

Human Rights Community

Human rights organizations around the world have consistently cited the conviction and imprisonment of Mr. Khodorkovsky as evidence of the arbitrary and political use of the legal system and the lack of a truly independent judiciary in the Russian Federation.

Most recently in April 2009, several key human rights organizations, including Amnesty International, Freedom House, Human Rights First, Human Rights Watch, the International League for Human Rights, the Lantos Foundation for Human Rights and Justice, and the Jacob Blaustein Institute for the Advancement of Human Rights sent, sent an open letter to President Medvedev expressing deep concern about the deterioration of the rule of law and human rights situation in Russia and the new, politically motivated trials of Messrs. Khodorkovsky and Lebedev.

U.S. State Department

On October 25, 2008, the State Department issued a statement marking the fifth anniversary of Mr. Khodorkovsky arrest, stating ``the conduct of the cases against Khodorkovsky and his associates has eroded Russia's reputation and public confidence in Russian legal and judicial institutions."

The 2008 State Department Human Rights Report on Russia stated: "The arrest and conviction of Khodorkovsky raised concerns about the right to due process and the rule of law, including the independence of courts and the lack of a predictable tax regime. The report also says that many observers believe Mr. Khodorkovsky is a "political prisoner" and that "he was selectively targeted for prosecution because of his politically oriented activities and as a warning to other oligarchs against involvement in political or civil society issues or providing financial support to independent civil society."

European Parliament

On March 13, 2008, the European Parliament issued a resolution calling on the Russian President to "review the treatment of imprisoned public figures (including Messrs. Khodorkovsky and Lebedev), whose imprisonment has been assessed by most observers as having been politically motivated."

Just this past month, Sabine Leutheusser-Schnarrenberger, rapporteur on behalf of the Council of Europe Parliamentary Assembly (PACE) Committee on Legal Affairs and Human Rights, carried out a fact-finding trip to Moscow to observe the second trial of Messrs. Khodorkovsky and Lebedev. She stated: "Whilst I do not wish to interfere in pending judicial proceedings, I cannot help feeling bewildered by the fact that the two men are again being tried for facts which appear to be essentially the same as those for which they were condemned in 2005."

U.S. Congress

The Khodorkovsky case has been a symbol of injustice in Russia for many years. The U.S. Congress has recognized this fact and taken steps to raise concerns with the government of Russia through public expressions of concerns that set forth specific rule of law principles. It is clear that Russia has disregarded any sense of international rule of law standards, instead opting for a politically controlled judicial process that fails to support even the most basic civil and human rights.

Around the arrest of Mr. Khodorkovsky in November 2003, Senator Richard Lugar and then-Senator Joe Biden co-sponsored a resolution (S. Res 258) which called the case against Mr. Khodorkovsky "politically motivated" and urged for a free and fair trial.

Two years later in November 2005 in response to Mr. Khodorkovsky's trial, sentencing and imprisonment, then-Senators Barack Obama and Joe Biden and Senator John McCain passed a resolution (S. Res. 322) that found the "criminal justice system in Russia has not accorded Mikhail Khodorkovsky and Platon Lebedev fair, transparent, and impartial treatment under the

laws of the Russian Federation.” They also found that the “criminal cases against Mr. Khodorkovsky, Mr. Lebedev and their associates are politically motivated.”

In November 2008, Representatives James McGovern and Frank Wolf, co-chairs of the Tom Lantos Human Rights Commission, sent a letter to then-Secretary of State Condoleezza Rice urging her to “continue to raise with the highest levels of the Russian government the case of Mr. Khodorkovsky to bring about an end to his harsh treatment.”

Conclusion

In closing, I would like to express my sincere gratitude to the Commission for taking such a leading and vocal role in supporting human rights in Russia and supporting Mikhail Khodorkovsky in his quest for fairness, justice and rule of law. Chairman Cardin, Senator Wicker, Congressman Hastings, and Congressman Issa, and Congressman Smith are among the Commission members who have expressed their concerns. In particular I would like to thank Senator Cardin for his April 3, 2009 statement expressing grave concerns about the Khodorkovsky trial and rule of law in Russia and Senator Roger Wicker for the introduction of Senate Resolution (S. Res. 189), both of which called the trial against Messrs. Khodorkovsky and Lebedev politically motivated and urged the Russian government to drop the second charges.

The second trial is a prelude to keeping Mr. Khodorkovsky in jail for a long time, if not for life. These abuses by the Russian justice system against Messrs. Khodorkovsky and Lebedev occurred for political and commercial gain by the state and at the expense of individual rights and rule of law. Without a personal expression of concern from the United States at the highest level, his safety and future are directly threatened. I urge the Commission and its Members to raise concerns about the treatment of Mr. Khodorkovsky with U.S. and Russian officials to support principles of human rights and rule of law in Russia and justice and freedom for Mikhail Khodorkovsky and Platon Lebedev.