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Allegations of politically motivated abuses of the criminal justice system in Council of Europe member states

Opinion¹

Committee on Economic Affairs and Development

Rapporteur: Mr Kimmo SASI, Finland, Group of the European People's Party

A. Committee conclusions

The Committee on Economic Affairs and Development appreciates the opportunity to contribute to a highly important debate on these abuses of certain justice systems. It fully shares the concerns expressed by the Committee on Legal Affairs and Human Rights with regard to politically and economically motivated interference.

The Committee on Economic Affairs and Development considers that the Parliamentary Assembly must exercise extreme vigilance to ensure that there is no repetition of such practices, which erode both the economic fabric of society and the rule of law in member states.

B. Explanatory memorandum by Mr Sasi, rapporteur

1. Introduction: when the justice system and the law become means of securing economic conquest

1. Abuse of the justice system in order to conquer a private economic operator in a particular country seriously undermines the economic freedom of every citizen and the rule of law that safeguards the fundamental freedoms of all persons, including that of economic operators. Unfortunately, such practices are being used to destroy businesses that have become dangerous rivals to the government or to an entrepreneur with close links to the government or the judiciary.

2. When that happens, the law and the justice system cease to be impartial and become merely instruments for securing economic conquest. Not only are such abuses harmful to economic activity in that they lead to greater economic nationalism, but even more importantly, they are a deterrent to foreign investors, anxious to avoid the same fate. They also act as a significant barrier to free competition on the markets of the countries concerned.

2. Various examples

3. For several years now, there have been reports of cases of economically motivated abuse of the justice system, notably in the Russian Federation. Nationalisations of private businesses prompted, according to the Russian judiciary, by allegations of fraud have led to many company executives either fleeing the country or being imprisoned. Such an environment is clearly not conducive to the development of a private business community that is not in thrall to the government.

1. See Doc. 11993 presented by the Committee on Legal Affairs and Human Rights.

4. The Yukos affair epitomises this authoritarian abuse of the system. I wish to recall here the excellent work done by Sabine Leutheusser-Schnarrenberger, rapporteur of the Committee on Legal Affairs and Human Rights, in her two reports² on this subject. I do not intend to comment on the ins and outs of this case which saw Yukos, a privately owned oil company, made bankrupt and broken up for the benefit of the state-owned company Rosneft. The assets were bought at auction by a rather obscure financial group, Baikalfinansgroup, for almost €7 billion. It is still not known who is behind this financial group. A number of experts believe that the state-owned company Gazprom had a hand in the matter. The former heads of Yukos, Mikhail Khodorkovsky and Platon Lebedev, were sentenced to eight years' imprisonment for fraud and tax evasion. Vasilij Aleksanyan, former vice-chairman of the company, who is suffering from Aids, was released on bail in January 2009 after being held in inhuman conditions condemned by the European Court of Human Rights.³ Lastly, Svetlana Bakhmina, deputy head of Yukos's legal department, who was sentenced in 2005 to six and a half years' imprisonment for tax fraud, saw her application for early release turned down in October 2008, even though she had served half of her sentence, had expressed "remorse" and was seven months pregnant. Thanks to the support of thousands of people around the world and the personal intervention of the United States President, George W. Bush, she was released in April 2009 after giving birth to a girl on 28 November 2008.

5. Unfortunately, the Yukos affair is not an isolated case in the oil and gas sector. During the same period, the oil group Russneft, owned by the oligarch Mikhail Gutseriev, was also accused of tax fraud. Gutseriev fled Russia and the company is still facing bankruptcy, thus paving the way for a takeover by a buyer or enterprise close to the government.

6. This attempt by the state-owned Gazprom to regain economic control of the oil and gas sector has also affected foreign companies involved in the two Sakhalin energy projects where production-sharing agreements were cancelled by the Russian authorities, forcing the foreign operators (Shell, Mitsui and Mitsubishi) to sell their stakes. In response to this decision, the European Bank for Reconstruction and Development (EBRD) withdrew financial support for the Sakhalin II project in August 2007.

7. Similar abuses of the justice system have occurred in other areas of economic activity, notably the securities and banking industries. One victim has been Hermitage Capital Management, an investment fund specialising in equity investments in Russian businesses, which is owned by the British bank HSBC. In 2006, Hermitage Capital Management was blacklisted by the Kremlin on the ground that it posed a threat to national security. Several senior executives were physically attacked and numerous documents confiscated. Following an investigation by the Russian secret service (FSB), the company was broken up.

8. These abuses of the justice system have also affected the media and in particular Media Most, a media holding company regarded as being one of the few opposition media groups. In June 2002, the owner of Media Most, Vladimir Gusinsky, was arrested for embezzlement in a case dating back to 1997. One month later, he sold Media Most to Gazprom and the charges against him were dropped. "I signed the agreement on condition that not only would I not return to prison, but also the criminal charges against me would be dropped,"⁴ said Gusinsky, who left Russia. In its judgment *Gusinsky v. Russia* of 19 May 2004, the European Court of Human Rights found that Gazprom had talked Gusinsky into signing a commercial agreement while he was in prison, in return for which the criminal charges against him would be dropped. The Court noted in this connection that it was "not the purpose of such public-law matters as criminal proceedings and detention on remand to be used as part of commercial bargaining strategies".⁵

9. According to various media outlets and witnesses, such predatory practices amount to an organised system of company takeovers by criminals acting on behalf of private interests protected by the government, with the connivance or even on the instructions of the government, as in the case of Yukos and Russneft. "None of this would be possible without the co-operation of highly placed individuals,"⁶ said a former secret service officer. This system also affects the 70 000 or so small- and medium-sized firms in the Russian Federation which are believed to have fallen victim to such attacks. Among the possible motives for taking over a company is its profitability or a desire to bring the competition to heel and, in the case of small- and medium-sized businesses, geographical location. After the takeover, the premises are let at an exorbitant rent or demolished to make room for a larger building.

2. The circumstances surrounding the arrest and prosecution of leading Yukos executives, 29 November 2004 (Doc. 10368) and Allegations of politically motivated abuses of the criminal justice system in Council of Europe member states, 7 August 2009 (Doc. 11993).

3. *Aleksanyan v. Russia*, European Court of Human Rights, 22 December 2008.

4. *Libération*, 19 September 2000.

5. *Gusinsky v. Russia*, European Court of Human Rights, 19 May 2004 (Application No. 70276/01).

6. *Moscow Times*, 13 August 2008.

3. Conclusion

10. In order to ensure a stable economic climate in these times of economic crisis, it is vital therefore that public authorities ensure and uphold impartiality of the law, including commercial and tax law.

11. It is unacceptable that Council of Europe member states which gave strict undertakings at the time of joining the Organisation should make no effort to scrupulously abide by the principle of a law-governed state, in which the law is enforced via the various justice systems in a fair and rigorous manner. Bankrupting private companies via legal means and then buying them up via state-owned companies and taking disproportionate legal action against company executives, claiming that they have committed tax offences, as in the Yukos affair, is something that must be condemned by the Parliamentary Assembly in the strongest possible terms. It is also desirable that wide-ranging international co-operation be instituted in this area in order to prevent such practices.

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Secretariat of the committee: Mr Newman, Ms Ramanauskaite, Mr de Buyer and Mr Pfaadt