I. DOUBLE JEOPARDY

Question 43. **Were the applicants convicted twice for the same offence, in breach of Article 4 of Protocol No. 7 of the Convention? In particular, how does the first conviction of the applicants for the use of tax cuts unlawfully obtained by the trading companies relate to the second conviction, which related to the same business operations with the same oil during the same periods of time? Is it permissible, under Article 4 of Protocol No. 7 to the Convention or Articles 6 and 7 thereof, to convict a person for evading taxes from business operations with stolen (embezzled, misappropriated, etc.) property? The Government are, in particular, invited to refer to other national legal systems where such prosecution is possible, if they exist.**

Question 44. **Was there a breach of Article 4 of Protocol No. 7 of the Convention on account of the fact that the applicants were tried separately under different heads for facts which constituted essentially the same business scheme, and received two separate prison sentences for those offences?**

SUMMARY OF GOVERNMENT'S RESPONSE

I1. The Government answer Questions 43 and 44 compendiously (paragraph 340 of the Memorandum). The applicants adopt the same approach.

I2. The Government's essential response to the Questions on Section I is to rely on the fact that the domestic courts had rejected the defence argument that there had been a breach of the rule against double jeopardy that is enshrined within Article 4 of Protocol No 7 of the Convention (paragraphs 341-343 of the Memorandum).

I3. The Government state "*Within the meaning of the law, the re-conviction for the same offence (or double jeopardy) presupposes that both cases contain a full set of component elements of the same crime*" (paragraph 345 of the Memorandum). However, this argument is inconsistent with both Russian law and the Grand Chamber's reasoning in *Zolotukhin v. Russia* [GC] no. 14939/03, ECHR 2009 (see further below).

I4. The Government refuse to respond to the Court's request in Question 43 in which they were expressly asked to refer to other national legal systems.

APPLICANTS' REPLY TO THE COURT'S QUESTIONS

(a) Introduction

I5. The applicants strongly maintain their claim that they were convicted twice for the same offence in breach of Article 4 of Protocol No 7. That claim was convincingly supported by the independent experts who reported to the Presidential Council (see further below) and the Government in their response have wholly failed to meet the applicants' arguments, just as the national courts at all levels did previously. Moreover, it is telling that the Government have refused to respond to the Court's request for further information in relation to whether any other national legal systems would permit the conviction of a person for evading taxes from business operations with stolen (embezzled, misappropriated, etc.) property. The natural inference to be drawn from that refusal is that the Government are unable to point to any such national legal system. Undoubtedly, the comparative legal analysis conducted by the applicants which is appended to this Reply at Annexe 3 supports the applicants' submission that they were convicted twice for the same offence in breach of Article 4 of Protocol No. 7.

I6. In the applicants' first trial they were found guilty of a number of economic crimes said to have been committed between 1994 and 2000. In particular, they were convicted of corporate tax evasion charges arising from the activities of the trading companies in the Lesnoy ZATO between 1998 and 2000. Those corporate tax evasion charges were based on an assessment of *"concrete factual circumstances"* (which the applicants believe to be false and unlawful) and are inextricably linked in *"time and space"* (to use the Grand Chamber's language in *Zolotukhin v. Russia,* see below) to the second charges for which they were convicted in their second trial before the Khamovnicheskiy District Court. The issue in both trials was the activities relating to the sales of the same oil extracted by Yukos' oil extracting companies and the use of the trading companies in the Yukos group. Thus, to answer the Court's question directly, the applicants' first conviction *"for the use of tax cuts unlawfully obtained by the trading companies*" is inextricably related to the second conviction *"which related to the same business operations with the same oil during the same periods of time.*" Furthermore, although they are inextricably linked, the convictions are, as a matter of substantive Russian law, mutually exclusive and thus incompatible.

(b) The Convention

I7. Article 4 of Protocol 7 of the Convention provides:

> "Article 4 – Right not to be tried or punished twice
>
> 1 No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
>
> 2 The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case."

I8. In *Zolotukhin v. Russia,* the Grand Chamber reviewed the Court's previous case law (§§ 70-77) and set out the approach that should now be taken:

> "80. **The Court considers that the use of the word "offence" in the text of Article 4 of Protocol No. 7 cannot justify adhering to a more restrictive approach. It reiterates that the Convention must be interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory.** It is a living instrument which must be interpreted in the light of present-day conditions (see, among other authorities, *Tyrer v. the United Kingdom*, 25 April 1978, § 31, Series A no. 26, and *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 75, ECHR 2002-VI). The provisions of an international treaty such as the Convention must be construed in the light of their object and purpose and also in accordance with the principle of effectiveness (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 123, ECHR 2005-I).
>
> 81. **The Court further notes that the approach which emphasises the legal characterisation of the two offences is too restrictive on the rights of the individual, for if the Court limits itself to finding that the person was prosecuted for offences having a different legal classification it risks undermining the guarantee enshrined in Article 4 of Protocol No. 7 rather than rendering it practical and effective as required by the Convention (compare *Franz Fischer*, cited above, § 25).**
>
> 82. **Accordingly, the Court takes the view that Article 4 of Protocol No. 7 must be understood as prohibiting the prosecution or trial of a second "offence" in so far as it arises from identical facts or facts which are substantially the same.**
>
> 83. The guarantee enshrined in Article 4 of Protocol No. 7 becomes relevant on commencement of a new prosecution, where a prior acquittal or conviction has already acquired the force of *res judicata*. At this juncture the available material will necessarily comprise the decision by which the first "penal procedure" was concluded and the list of charges levelled against the applicant in the new proceedings. Normally these documents would contain a statement of facts concerning both the offence for which the applicant has already been tried and the offence of which he or she stands accused. In the Court's view, such statements of fact are an appropriate starting point for its determination of the issue whether the facts in both proceedings were identical or substantially the same. The Court emphasises that it is irrelevant which parts of the new charges are eventually upheld or dismissed in the subsequent proceedings, because Article 4 of Protocol No. 7 contains a safeguard against being tried or being liable to be tried again in new proceedings rather than a prohibition on a second conviction or acquittal (compare paragraph 110 below).

> 84. **The Court's inquiry should therefore focus on those facts which constitute a set of concrete factual circumstances involving the same defendant and inextricably linked together in time and space, the existence of which must be demonstrated in order to secure a conviction or institute criminal proceedings."** (Emphasis added).

I9. It is clear from the foregoing, and in particular from § 81 of the Grand Chamber's judgment, that the Government's argument that "*Within the meaning of the law, the re-conviction for the same offence (or double jeopardy) presupposes that both cases contain a full set of component elements of the same crime*" (paragraph 345 of the Memorandum) is inaccurate and mis-conceived as a matter of Convention law. If the Court limited itself to finding that a person was prosecuted for offences having a different legal classification, it risked undermining the guarantee enshrined in Article 4 of Protocol No. 7 rather than rendering it practical and effective as required by the Convention. The Government were aware in advance of the position of this Court as set out above, particularly given that the Government was a party to *Zolotukhin*, however in the present case the Government intentionally improperly distorts this clearly established position of the Court.

I10. The principles expressed in *Zolotukhin* have most recently been cited and applied in *Glantz v. Finland*, no. 37394/11, 20 May 2014. In *Glantz* the Court found a violation of Article 4 of Protocol No 7 in circumstances where the applicant had been the subject of tax proceedings for undeclared income between 2000 and 2004[1] as well as criminal proceedings for embezzlement and aggravated tax fraud between 1997 and 2003.[2] At § 52 the Court stated:

> "The Court acknowledged in the case of *Sergey Zolotukhin v. Russia* (see *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, §§ 81-84, ECHR 2009) the existence of several approaches to the question whether the offences for which an applicant was prosecuted were the same. The Court presented an overview of the existing three different approaches to this question. It found that the existence of a variety of approaches engendered legal uncertainty incompatible with the fundamental right not to be prosecuted twice for the same offence. It was against this background that the Court provided in that case a harmonised interpretation of the notion of the "same offence" for the purposes of Article 4 of Protocol No. 7. In the *Zolotukhin* case the Court thus found that an approach which emphasised the legal characterisation of the two offences was too restrictive on the rights of the individual. If the Court limited itself to finding that a person was prosecuted for offences having a different legal classification, it risked undermining the guarantee enshrined in Article 4 of Protocol No. 7 rather than rendering it practical and effective as required by the Convention.

[1] § 7 of the judgment.
[2] §14 of the judgment.

> Accordingly, the Court took the view that Article 4 of Protocol No. 7 had to be understood as prohibiting the prosecution or trial of a second "offence" in so far as it arose from identical facts or facts which were substantially the same. It was therefore important to focus on those facts which constituted a set of concrete factual circumstances involving the same defendant and inextricably linked together in time and space, the existence of which had to be demonstrated in order to secure a conviction or institute criminal proceedings."

I11. Based upon the analyses provided by the Court in *Zolotukhin* and *Glantz* it can be seen that the correct approach to Article 4 Protocol 7 is a wide rather than restrictive one that focuses upon rendering practical and effective protection to the individual who has been prosecuted.

(c) Domestic law

I12. Double jeopardy is expressly prohibited under Russian law:

(a) The RF Constitution provides that "*no one may be convicted twice for one and the same crime*" (Article 50 § 1).[3]

(b) Article 6 (2) of the RF Criminal Code provides "*No one may be held criminally liable twice for the same crime.*"[4].

(c) The RF CCrP establishes that criminal proceedings should be discontinued if there exists a final judgment against the suspect or defendant concerning the same charges or a decision by a court, investigator or examiner to discontinue the criminal case concerning the same charges or not to institute criminal proceedings (Article 27 (4) and (5)).[5]

(d) The criminal proceedings in the first case had been concluded by a "final" decision

I13. There is no dispute that the criminal proceedings in the first case against the applicants had been concluded by a verdict, i.e. the delivery of a "*final*" decision,[6] by the time that the proceedings in the second case commenced (see *Franz Fischer v. Austria*, no. 37950/97, § 22, 29 May 2001; *Gradinger v. Austria*, 23 October 1995, § 53, Series A no. 328-C; and *Zolotukhin v. Russia* [GC], cited above, § 107). The judgment in the first case

[3] See Vol. C, tab C3, of the November 2011 Memorial.
[4] See Vol. C, tab C4, of the November 2011 Memorial.
[5] See Vol. C, tab C8, of the November 2011 Memorial.
[6] See Article 5 (53.2) of the RF CCrP: "*final court decision – a verdict or other court decision delivered during the course of trial proceedings which resolves a criminal case on its merits.*"

became "*final*" and acquired the force of *res judicata* on 22 September 2005 when the Moscow City Court delivered its judgment on the applicants' cassational appeals.[7]

(e) The corporate tax evasion charges in the first trial involved "concrete factual circumstances" which are inextricably linked in "time and space" to the charges in the second trial

I14. Both the first and second trials were concerned with the same structure and business configuration used in the Yukos group of companies, for selling the same oil, produced by one and the same group of subsidiary producing entities of OAO NK Yukos (the very same being the "injured parties" in the "second" case), as well as oil products, produced from this oil, with the use of one and the same group of trading companies, in the same period of time (the years 1999-2000). This is shown clearly by comparing the content of the verdict in their first trial –

> "…M.B. Khodorkovsky, P.L. Lebedev and members of the organised group used controlled by them shell companies **OOO «Business-Oil», OOO «Mitra», OOO «Wald-Oil», and OOO «Forest-Oil» …** to create outward appearance of performing agency activities and commit the acts and crimes on behalf of these organisations. …their activity was loss-bearing and **aimed at avoiding tax payments by the oil-producing and oil-processing subsidiary companies of OAO «NK «Yukos» and its affiliated commercial organisations**"[8] (emphasis added).

and the verdict in the second trial:

> "M.B. Khodorkovsky determined the principal functions for P.L. Lebedev as the person held in the greatest confidence: financial and administrative management of the Russian and off-shore companies used for executing the trade and financial operations of OAO NK Yukos (its subsidiary operational and marketing enterprises). **In so doing, companies created upon the direction of P.L. Lebedev and M.B. Khodorkovsky in the ZATOs of the town of Lesnoy of Sverdlovsk Oblast** and the town of Trekhgorny of Chelyabinsk Oblast were used in the Russian Federation.
>
> **Thus, in execution of the directions of P.L. Lebedev, M.B. Khodorkovsky and the other members of the organised group, the head of the OOO Yukos-Moscow directorate of tax planning and another person – a worker of this company [–] did in 1997-1998 register through employees of JV RTT, which was under the control of the members of the organised group, the commercial organisations OOO Mitra, OOO Forest-Oil, OOO Wald-Oil and OOO Business-Oil in the ZATO of the town of Lesnoy** and OOO Muskron, OOO Nortex, OOO Quercus, OOO Coleraine, OOO Grace and OOO Virtus – in the ZATO of the town of Trekhgorny. The given organisations were sham legal entities by their essence and were used for recording the flows of oil, oil products, securities and

[7] § 313 of *Khodorkovskiy (no.2).*
[8] See p. 44 of the 2005 verdict at Vol. C, tab C31, of the November 2011 Memorial.

monetary funds through them, with the objective of ensuring the opportunity for the unimpeded disposition of the stolen property" [9] (emphasis added).

I15. Although in the second trial the time frame specified by the charges was extended to 2003, the core of the case was essentially the same. However, the two trial courts came to mutually and irreconcilably contradictory conclusions about essentially the same factual circumstances. Moreover, the requirement that the offences are "*inextricably linked together in time and space*" does not mean that they must encompass precisely the same time frame – as the Court's finding of a violation in *Glantz* makes plain. As noted above, in that case the applicant had been the subject of tax proceedings for undeclared income between 2000 and 2004 [10] as well as criminal proceedings for embezzlement and aggravated tax fraud between 1997 and 2003.

I16. Professor Otto Luchterhandt of the University of Hamburg commented in his independent expert report for the Presidential Council on the extent to which the charges in the first trial involved the same factual circumstances to the charges in the second trial:

> "If one compares them to the circumstances of the case contained in the bill of indictment and in the 2005 verdict of the Meshchansky District Court, the following coincidence catches the eye: back then, the matter in question was the same accused, the role they played in the sales of oil produced by Yukos's subsidiaries, and, furthermore, criminal law assessment of processes in the vertically-structured Yukos concern as a whole. The factual circumstances which were examined by the procuracy investigators *now* and form the substance of the bill of indictment and serve as grounds for conviction of Khodorkovsky and Lebedev for the crime described in Art. 160 CC, had also been in full the subject of the first trial and verdict of 2005.
>
> That makes one remember right away classic principle of a rule-of-law state – no one may be convicted twice for the same deed (*ne bis in idem*)! The principle is present both in the Constitution of Russia (Art. 50 para. 1) and in Art. 6 para. 2 of the Criminal Code. Art. 14 para. 1 CC RF implies by a crime a "socially dangerous deed" for which CC envisages a punishment. Therefore, the circumstances of the case which condition criminal liability which [the circumstances of the case] the (state) court has already examined once and exactly based on which it issued the verdict are important.
>
> Art. 50 para. 1 of the Constitution prohibits a repeated conviction of a person who has been already found guilty for a conduct related to such circumstances of a case with the use of another crime. The Constitution seeks to prevent a person from being convicted for any punishable deed again and again. Once punishment has been executed, his/her guilt has been redeemed and demand of the state that the criminal be punished has been fulfilled. A set of deeds a person has already been found guilty of by a verdict does not make it legitimate for the state to punish further. The investigators, prosecutors, and Judge Danilkin ignored and thereby violated grossly the constitutional principle, which is also the main criminal

[9] See pp. 7-8 and 76-78 of the verdict at Vol. C, tab C213, of the November 2011 Memorial.
[10] § 7 of the judgment in *Glantz.*

procedural right of the accused. The charges could not be brought, the court hearing could not be opened, and the guilty verdict for misappropriation and money laundering – based on the facts considered in the first case – could not be issued."[11]

(f) No "evidence of new or newly discovered facts"

I17. There is no suggestion by the Government that the 'second' case was brought as a consequence of "*new or newly discovered facts.*" Moreover, the Government have bluntly admitted that the 'second' case "*was largely based on the materials collected during the investigation of main criminal case no. 18/41-03*" (paragraph 9 of the Memorandum). There is no question therefore that the bringing of the 'second case' was justified by "*new or newly discovered facts*" as provided for by Article 4 (2) of Protocol No 7.

I18. In fact, all of the factual circumstances were known to the prosecution from the start; the documents and other materials presented to the court as "prosecution evidence" in the "second" case reflecting Yukos' marketing operations were available to the prosecution even in the period of the pre-trial proceedings in the "first" case. All of this "evidence" was found in the materials of the "main" case 18/41-03, under which, as has already been indicated above in Section A, all of the "investigation" was in fact taking place, and from which the "first" case in relation to the applicants, and subsequently the "second" as well, were unlawfully severed. Moreover, materials in this first ("principal") case, including those obtained as a result of numerous searches and seizures, were used by the state to impose tax claims on Yukos to a period of time that completely overlaps with the period of time referenced in the charges in the "second" case, and in subsequent examination of disputes regarding those matters in Russia's arbitrazhh commercial courts that took place in 2003-2007.

I19. It is notable that at no stage in the second trial (or in the ensuing appeals) did the prosecution assert that the second case was prompted by newly discovered circumstances that served as grounds for the "second" charges. Equally there was no recognition by the prosecuting authorities that there was a "*fundamental defect in the previous proceedings, which could affect the outcome of the case*": on the contrary, the prosecution, the national courts and the Government always insisted on the correctness of the first trial's verdict. The prosecution and the trial court consistently asserted that the subject of assessment in the "second" case is nothing less than the activity of the Yukos group of companies

[11] See p. 214 of the report at tab 140 to this Reply

connected with the marketing of output – oil and oil products and settlements for it, without references whatsoever to any new (newly discovered) circumstances. It is precisely this activity that had been the subject of assessment in the "first" case as well, in so far as concerns the tax evasion charges under Article 199 of the RF Criminal Code.

(g) The trial court's rejection of the applicants' double jeopardy argument

I20. The applicants have consistently argued that the charges in the second trial amounted to a violation of the rule against double jeopardy.[12]

I21. The rejection by the trial court of the double jeopardy argument was carefully analysed and convincingly condemned by Professor A.D. Proshlyakov, head of the Department of Criminal Process of the Ural State Law Academy in his report for the Presidential Council:

> "[T]he court ended up having to resolve yet one more question, namely, whether or not the charge laid against the defendants is identical to the one under which they were convicted under a verdict of the Meshchansky District Court of the city of Moscow of 16.05.2005. Rejecting the arguments of the defence about the identicalness of the new charge to the previously laid one, the court gave the following arguments:
>
> > "Arguments of the defence that the charges of misappropriation of oil and tax evasion are the same crimes because taxes, as per their theory, were paid on the stolen oil, are untenable. Taxes were paid on profit, and the organized group participants stole property in the form of oil. Profit is not property because it is a calculated accounting value which is a difference between income and expenses. It is impossible to steal figures which exist in accounting records, but it is possible to commit theft of oil which is a material value, which is property. Relations concerning the making of tax payments (taxes) to the budget are the object of a tax offence (crime). Calculated value between income and expenses, rather than property, is a base for assessment of a tax rate. While relations concerning the rights of use, possession and disposal in certain property are the subject of misappropriation (theft). In this connection, assertions by the defendants and the defence that it is impossible to claim payment of taxes if all the oil was stolen are not grounded because the objects of crimes differ" (p. 658-659).
> >
> > "During the judicial proceedings in this case, the defence put forward on repeated occasions the argument that the deed imputed to the defendants within the framework of the so-called theft of entrusted oil and legalisation had already been the subject of the

[12] See for example the appeal lodged on 16 April 2008 with the Basmanniy District Court, Moscow, under the procedure of Article125 of the RF CCrP, in which the applicants argued that the case should be terminated on the grounds, *inter alia*, that the charges related to events that had been the subject matter of the first trial of the applicants in 2004-2005. If there was any merit in the charges, then they should have been brought at the same time as the first trial – see further paragraph 52 of the November 2011 Memorial and the application under Article 125 of the RF CCrP at Volume C, tab C82, of the November 2011 Memorial.

judicial proceedings based on the results of which the Meshchansky District Court of the City of Moscow had issued a guilty verdict regarding M.B. Khodorkovsky and P.L. Lebedev on 16.05.2005 which had become final.

"The court has a critical attitude toward those arguments on the following grounds:

"M.B. Khodorkovsky and P.L. Lebedev were sentenced by the verdict of the Meshchansky District Court of the City of Moscow of 16 May 2005 under Art. 33 para. 3 and Art. 199 para 2 (a), (c), and (d) CC RF for tax evasion in the total amount of RUB 17,395,449,282 of benefits in the tax haven of the Town of Lesnoy, Sverdlovsk Oblast, in 1999-2000 and failure to pay taxes with monetary funds by way of transfer of OAO NK Yukos promissory notes, using legal entities – OOO BUSINESS-OIL, OOO Mitra, OOO Wald-Oil, and OOO Forest-Oil.

"In this criminal case, they are charged with having committed in 1998-2003 theft by way of misappropriation from OAO Samaraneftegas, OAO Yuganskneftegas, and OAO Tomskneft VNK over the period of 1998-2003.

"However, one can perceive from the above data that M.B. Khodorkovsky and P.L. Lebedev are charged in this case with having committed other crimes which do not match those for having committed which they were convicted by the Meshchansky District Court of the City of Moscow verdict, *i.e.*, the crime commission periods and the objects of criminal encroachment do not match.

"Thus, the same objects of criminal encroachment, in one event as tax evasion and in another as theft by way of misappropriation, were not imputed to the defendants twice" (p. 661-662).

But the time of the commission of the "first" crime (1999-2000) is completely encompassed by the period of the "second" (1998-2003). Both crimes were committed by the one and the same persons, in one and the same place (the town of Lesnoy of Sverdlovsk Oblast), in one and the same way. Nor can one agree with the opinion of the court that these are different crimes, inasmuch as they have different objects, since:

1) Article 14 of the International Covenant on Civil and Political Rights of 1966 proclaims that no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted in accordance with the law and criminal-procedure law of each country. This international-law principle is embodied likewise in art. 50 para 1 of the Constitution of the Russian Federation ("No one may be repeatedly convicted for the same offense") and in art. 6 para 2 CC RF ("No one can be held criminally liable twice for the same offense"). Art. 27 para 1 (4) CCP RF establishes that criminal prosecution in relation to a suspect or an accused shall be terminated in the presence in relation to the suspect or the accused of a verdict that has come into legal force with respect to the same charge or of a court ruling or a judge's judgment to terminate a criminal case on the same charge.

2) By a charge current criminal-procedure law understands an assertion about the commission by a certain person of an act prohibited by criminal law (art. 5 para 22 CCP RF). In so doing in the order to bring charges must be contained a description of the crime with an indication of the time, the place of its commission, as well as of other circumstances subject to proof pursuant to art. 73 para 1 (1)-(4) CCP RF (art. 171 para 2 (4) CCP RF).

3) From the content of art. 5 para 22 and art. 171 para 2 (4) CCP RF it derives that by the same charge ought to be understood the same factual circumstances of a committed act (time, place, method, situation and others). Its criminal-law classification in the given situation does not have significance, since otherwise one would have to recognise that any other assessment of the act (including also as an ideal aggregate of two or more crimes) must lead to factual non-recognition and ignoring of the binding nature of a guilty or not-guilty verdict that has come into legal force, as well as of another court decision (art. 392 para 1 CCP RF).

In such a manner, if what has been done was classified by an investigator, an inquiry officer or a prosecutor with one or several articles of the Special part of the CC RF, and a guilty or not-guilty verdict has been issued with respect to this charge, then its entry into force shall rule out the repeat examination of a criminal case in relation to that same person with respect to those same factual circumstances, even if:

- A different criminal-law classification has been given to the act;
- The same act has been qualified as constituting an offence a second time, this time as one of several crimes committed together;
- New facts that had not been directly reflected in the verdict are a part of that complex crime with respect to which the previous charge had been formulated;
- The action (inaction) being imputed to guilt, which, even though it is characterised by a certain independence, in essence nevertheless supplements the act indicated in the verdict and with it comprises one whole, *i.e.* a single crime.

Criminal prosecution of such a person in all of the enumerated situations must be unconditionally terminated at all stages of criminal judicial proceedings (art. 27 para 1 (5) CCP RF, arts. 212, 239, 254 CCP RF and others), while a new examination of the case will contradict the international-law, constitutional and criminal-law principle of the inadmissibility of repeat convictions for one and the same act."[13]

I22. The cassational and supervisory courts all merely reproduced in abbreviated form the trial court's unsustainable argument about "*different objects of criminal encroachments*"[14] that proves nothing.[15] Even after the Chairman of the RF Supreme Court ordered, in his decrees of 24 July 2012[16] and 25 December 2013,[17] the initiation of supervisory proceedings with respect to the complaints of the defence, directly indicating the necessity of a thorough check of the double jeopardy argument having referred to concrete circumstances supporting the defence arguments, the courts evaded carrying out the Chairman's directive.

[13] See report at tab 140, p.285-289
[14] "Criminal encroachment" is synonymous with "criminal act", which the domestic courts frequently use.
[15] See for example paragraph 1 on. p.59 of the Ruling of the Judicial Collegium for Criminal Cases of the Moscow City Court, 24 May 2011, at Vol. C, tab C232, of the November 2011 Memorial.
[16] See copy at tab 147 to this Reply.
[17] See copy at tab 154 to this Reply.

(h) The findings of the first and second trial courts are mutually incompatible and contradictory

I23. As noted above, both Professors Luchterhandt and Proshlyakov found that the charges in the second trial violated the rule against double jeopardy. Professor A.V. Naumov, the head of the Department of Criminal Law Disciplines of the Academy of the Procuracy-General of the Russian Federation and member of the Consultative-scholarly council of the RF Supreme Court, came to the same conclusion in his report to the Presidential Council. Professor Naumov, in particular, commented on the extent to which the verdicts in the two trials were mutually incompatible and contradictory under Criminal Law. The edition of Article 174.1 of the RF Criminal Code that was in force at the time the verdict was delivered expressly stated that liability for legalisation (laundering) charges could not arise if the predicate offence was tax evasion under Article 199 of the RF Criminal Code.[18] Moreover, the findings of the first trial had the force of *res judicata* under Article 90 of the RF CCrP:

> "The charge of commission of the indicated crime obviously contradicts the verdict with respect to the first case of M.B. Khodorkovsky and P.L. Lebedev of the Meshchansky District Court of the city of Moscow of 16.03.2005. M.B. Khodorkovsky and P.L. Lebedev were convicted under

[18] See Article 174.1 of the RF Criminal Code which stated at the material time:
"Article 174.1. The Legalisation (Laundering) of Amounts of Money or Other Property Acquired by a Person as the Result of an Offence Committed by Him/Her
1. Financial transactions and other deals with monies or other property acquired by a person as the result of his/her having committed an offence **(except for the offences stipulated by Articles 193, 194, 198 and 199, 199.1 and 199.2 of the present Code**), for the purpose of giving the appearance of legitimacy to the possession, use or disposal of the said monies or other property, committed in a large amount, shall be punishable by a fine"
(emphasis added).

art. 199 CC RF. Convicted for those same actions. The difference, however, in so doing – is one of principle. Under the first verdict, in contrast with the second verdict, the court deemed the actions of the defendants with respect to the acquisition of oil from the oil production enterprises and its subsequent sale to be rightful. The crime, in the opinion of the court, consisted pursuant to art. 199 CC RF of evasion from the payment of taxes and/or levies from an organisation. And the finding of the guilt of the defendants of this crime rules out their guilt of the commission by them of theft of the oil produced by the oil production enterprises. Thus, in the material "On some questions of judicial practice with respect to cases of illegal entrepreneurship and legalisation (laundering) of monetary funds or other property acquired in a criminal way" (factually being a commentary to decree No. 23 of the Plenum of the Supreme Court of the Russian Federation "On judicial practice with respect to cases of unlawful entrepreneurship and legalisation (laundering) of monetary funds or other property acquired in a criminal way" of 18 November 2004) published in the *Byulleten' Verkhovnogo Suda Rossiyskoy Federatsii*, it is justly asserted that, first, "all the income received as the result of criminal activity is subject to conversion to the benefit of the state, in connection with which tax can not be assessed on this income, and, second, by agreeing to the imposition of a tax on income received as the result of a crime, the state is legalising the crime itself, as it were" (*Byulleten' Verkhovnogo Suda Rossiyskoy Federatsii*. 2005, No. 2, p. 30). Absolutely correct, as they say, "every hair in place", but it's just that the judges, at least those who issued the verdict, do not read the Supreme Court of the Russian Federation's monthly.

Third, the conviction of the defendants for the misappropriation of another's property that is being inculpated to them signifies nothing short of their repeat conviction for the very same acts – for the acquisition of oil from the oil production enterprises and its subsequent resale. As has already been noted, the difference is merely in the criminal-law classification of the deed (in the first situation – for a tax crime, and in the second – for a crime against property). This, first, contradicts art. 50 of the Constitution of the Russian Federation and art. 6 para 2 CC RF based on it. It is appropriate to recall that both art. 50 of the Constitution of the RF and art. 6 para 2 CC RF are based on known principles and norms of international law (for example, art. 14 para 7 of the International Covenant on Civil and Political Rights)" (see tab 140, p. 237-238).

(i) Conclusions

I24. Under such circumstances not only do the charges brought in the second case not represent the result of the investigation of any new (or newly discovered) circumstances, but they also do not represent the result of any new investigation of the circumstances already known by the prosecution. In reality, we are simply talking about an arbitrary replacement of a contrived criminal 'label'. First, the true aim of the applicants' prosecution for corporate tax evasion was achieved, namely to bankrupt Yukos, subsequently expropriate its assets and to imprison and discredit the applicants. Then a new criminal 'label' was stuck over the first one, containing more serious allegations of theft and legalisation in relation to the same circumstances. It is the applicants' belief that this was done in bad faith with the aim of preventing their release, not only on parole but also following the end of their sentence under the first sentence, and of damaging

their reputations still further by declaring all the activities of the major company that they controlled to have been criminal.

I25. In the verdict, the court, in bad faith, sought to avoid at all costs having to admit the fact that the applicants were deliberately being prosecuted a second time in respect of the *"concrete factual circumstances"* which were inextricably linked in *"time and space*" to the charges in the first trial, also resorted to manipulation of the defence's arguments and misrepresenting its position.[19] The superior courts subsequently went on to behave in the same manner.

I26. The verdict's empty and legally incoherent claim that "*profit is not property",* and *"it is impossible to steal figures*"[20] does nothing to rebut the defence's position. Continuing its attempts to obfuscate and to distort the straightforward position of the defence, the domestic courts repeated the theory that tax evasion and theft have different objects of criminal encroachment,[21] which is not disputed but which is inapposite and irrelevant to the defence's arguments. The trial court then went on to draw the absurd 'conclusion,' which is clearly inconsistent with the law and with the doctrine of criminal law (and at the same time supports the applicants' assertion that they were being tried a second time for the same acts): "*Thus, theft and channelling of the proceeds from sales of what was stolen into turnover was primary in this event, in the process of which tax evasion was committed with a view to concealing the theft committed and leaving at their disposal the maximum possible amount of proceeds from sales of the property they stole.*"[22]

I27. These verbal manipulations are nothing more than dishonest and helpless attempts to cover up a position known to be baseless with an abundance of nonsense. It is objectively impossible to find and make honest arguments against the

[19] See pp.658-659 of the verdict: "*Arguments of the defence that the charges of misappropriation of oil and tax evasion are the same crimes because taxes, as per their theory, were paid on the stolen oil, are unsustainable. Taxes were paid on profit, and the organized group participants stole property in the form of oil. Profit is not property because it is a calculated accounting value which is a difference between income and expenses. It is impossible to steal figures which exist in accounting records, but it is possible to commit theft of oil which is a material value, which is property. Relations concerning the making of tax payments (taxes) to the budget are the object of a tax offence (crime). Calculated value between income and expenses, rather than property, is a base for assessment of a tax rate. While relations concerning right, title, and interest in certain property are the object of misappropriation (theft). In this connection, assertions by the defendants and the defence that it is impossible to claim payment of taxes if all the oil was stolen are groundless because the objects of crimes differ.*" The verdict is at at Vol. C, tab C213, of the November 2011 Memorial.
[20] See the extended citation in the foregoing footnote.
[21] See p. 662 of the verdict at Vol. C, tab C213, of the November 2011 Memorial.
[22] *Ibid.*

established truth: a thief (or, for that matter, an 'instrument of theft', i.e. a legal entity that is used in order to commit theft) does not at any point incur a legal obligation to pay tax, either on the stolen property itself or on the income from its sale. A taxable base may only be derived from the legitimate possession of an asset, legal transactions with it and the legal incomes from these transactions. In other words, the object of taxation must be in legitimate legal circulation, whereas property that has been stolen continues to be the property of the owner, not of the thief or of the legal entity that he has used as the 'instrument' for committing the theft. On the other hand, no tax obligations can be incurred by the owner of the stolen property either, since he has been deprived of this property unlawfully and against his will, and is unable to use it or sell it and receive a legitimate income subject to taxation.

I28. The applicants' case in relation to double jeopardy is strongly and compellingly supported by the independent experts that reported to the Presidential Council. The applicants were not only convicted a second time for one and the same act, but the acts inculpated to them by the verdict of the Khamovnicheskiy District Court themselves received a mutually exclusive legal assessment, in relation to the verdict of the Meshchanskiy District Court. Moreover, under the substantive criminal law which was in force at the time the verdict was delivered, the finding of corporate tax evasion directly prohibited the bringing of laundering (legalisation) charges under Article 174.1 of the RF Criminal Code.

I29. The bringing of second charges in such circumstances was clearly in bad faith and unlawful under the domestic law and under the Convention. The fact that they were brought, shortly before the applicants became eligible to petition for parole, is a yet further indicator of the state's consistent and patent bad faith throughout the proceedings. In the words of Amnesty International immediately after the cassational appeal was examined and rejected by the Moscow City Court, with the bringing of the second charges the applicants had:

> "been trapped in a judicial vortex that answers to political not legal considerations. Today's verdict makes it clear that Russia's lower courts are unable, or unwilling, to deliver justice in their cases....The failure of the appeal court to address the fundamental flaws in the second trial and the fact that Mikhail Khodorkovsky and Platon Lebedev have already spent eight

years in jail on barely distinguishable charges, points to the conclusion that their second convictions have been sought for political reasons relating purely to who they are."[23]

Question 45. Does the crime of "embezzlement" under Russian law presuppose that the injured party has suffered any damage as a result thereof, or is the existence of damage not a *conditio sine qua non* for a conviction for embezzlement? If the existence of "damage" is a necessary element, does the qualification of the crime as "embezzlement" depend on the amount of the damage or only on the price of the "embezzled" property?

SUMMARY OF THE GOVERNMENT'S RESPONSE

I30. The Government state that "*damage is a necessary element of stealing*" (paragraph 356 of the Memorandum). The Government neglect, however, to explain that it is necessary to prove damage in the form of actual damage in the form of direct losses – see further below.

I31. The Government acknowledge that the value of the stolen property is assessed by reference to "*the actual cost of the property at the moment of the crime*" (paragraph 358 of the Memorandum): an undisputable principle of the domestic law, which the Government completely ignored in their responses to the Questions in Section G. It is, of course, a principle that runs entirely contrary to the Governments' responses to the issue as to how to value the allegedly stolen oil.

APPLICANTS' REPLY TO THE COURT'S QUESTIONS

I32. As has already been discussed above in the applicants' answers to the Questions in Section G, the applicants were in fact convicted of theft by way of misappropriation (not embezzlement) of oil and legalisation. The applicants will therefore address the issue of whether "*the crime of misappropriation under Russian law presupposes that the injured party has suffered any damage as a result thereof, or is the existence of damage not a conditio sine qua non for a conviction for misappropriation?*"

I33. Misappropriation under Russian criminal law is one of the ways of committing theft. Consequently, to find a person guilty of the commission of misappropriation it must be proved irrefutably that each of the mandatory common features of theft, and the

[23] See *Amnesty International*, "Russian Businessmen Declared Prisoners of Conscience After Convictions are Upheld," 24 May 2011, at Vol. C, tab C229, of the November 2011 Memorial.

mandatory specific features characterising specifically misappropriation as a way of committing theft, are both present in its actions. Note 1 to Article 158 of the RF Criminal Code sets out the mandatory common features of any theft (including misappropriation or embezzlement). It specifies that theft is *"the unlawful gratuitous taking or conversion of another's property for the benefit of the guilty party for selfish purposes that causes harm to the owner.*"

I34. As such, a mandatory feature of any theft, including misappropriation, is the causing of damage to the injured party. If there is no such damage then there can be no theft. Furthermore, during theft not just "any" damage needs to be caused to the injured party, but only actual damage in the form of direct losses. Under-received income (foregone benefit), just like any other forms of damage other than actual damage in the form of direct losses, do not under any circumstances form the *corpus delicti* of theft and do not entail criminal liability for theft. This is a long established and indisputable legal principle both in doctrine and in judicial practice. The position is clearly expressed in paragraphs 16 and 25 of Decree no. 51 of the Plenum of the RF Supreme Court "On Judicial Practice in Cases of Fraud, Embezzlement, and Misappropriation" of 27 December 2007:

> "16. …the court must establish if substantial property damage or damage in the form of lost profit, that is, income that was never received but would have been received under the normal conditions of civil turnover had his right not been violated by means of deception or abuse of trust, has been caused to the owner or another holder of the property
>
> 25. The calculation of value of property stolen as a result of fraud, misappropriation or embezzlement should be based on its actual value at the moment the crime was committed. In the lack of the information on the cost of the stolen property, its value may be established on the basis of expert reports.
>
> When establishing the amount in which fraud, misappropriation or embezzlement was committed by a person, the courts should take into account the fact that the theft of property that was simultaneously replaced with less valuable [property] is classified as theft amounting to the value of property seized."[24]

I35. Professor Naumov discussed this issue in his expert report:

> "**In relation to the causing of damage to the owner or other possessor of the property, it ought to be noted that this feature is understood both in the doctrine (scholarship) of criminal law and in court practice as the causing of *real* pecuniary damage, and not in the form of foregone benefit. This is indicated at in *any* textbook on the Particular part of criminal law. For example, "An indispensable feature of the objective side of theft is**

[24] A copy of the Ruling is at tab 78 to this Reply.

that it causes *direct* pecuniary damage to the owner or other possessor of the stolen property. It consists of a reduction in the quantity (the volume) of the property found in the ownership of the injured party, *i.e.* in the final reckoning, the damage is determined by the cost of the things seized from the guilty party [*sic*] (monetary funds, securities, etc.). Other negative consequences arising in connection with the seizure of property from the ownership of the injured party, of both a pecuniary (for example, *foregone benefit*) and a non-pecuniary character (for example, severe emotional trauma), must not be regarded as damage caused by theft" (*Ugolovnoye pravo. Obshchaya i Osobennaya chast'. Uchebnik.* Under the editorship of M.P. Zhuravlev and S.I. Nikulin. 2nd ed. M., Norma, 2008, p. 447). "A *sine qua non* feature of the objective side of theft – the emergence of socially dangerous consequences in the form of the causing of *direct, real* pecuniary damage to the owner or other lawful possessor of the property. Benefit not obtained is not taken into consideration when determining the amount of the damage caused" (*Ugolovnoye pravo Rossiyskoy Federatsii. Osobennaya chast'.* Under the editorship of B.T. Razgil'diyev and A.N. Krasikov. Saratov. 1999, p. 151). The position of judicial practice on this account is expressed in a clear-cut manner in decree No. 51 of the Plenum of the Supreme Court of the Russian Federation "On judicial practice in cases of fraud, embezzlement and misappropriation" of 27 December 2007: "it is imperative for the court to establish whether *real* pecuniary damage has been caused to the owner or other possessor of the property or damage in the form of foregone benefit, that is un-received incomes, which this person would have received under usual conditions of civil turnover" (*Byulleten' Verkhovnogo Suda Rossiyskoy Federatsii.* 2008, No. 2, p. 6)." (Emphasis added).[25]

I36. The applicants emphasise this point because the Court's reference to "any damage" in Question 45 suggests that the Court may mistakenly consider that the Russian substantive law allows for foregone benefit or some other damage, other than actual damage in the form of direct losses to be recognized as damage caused by theft. In so doing, it is important to note that the value of allegedly stolen property, and consequently the amount of the damage from the alleged theft, are determined solely by reference to the factual value of the property as at the time of the commission of the crime as stated by the injured party in its reporting (on its financial accounting balance sheet). In the absence of such information, the factual value can be determined by way of expert evidence as the RF Supreme Court has made clear. The factual value of the property that has been manufactured by the injured party himself is determined, pursuant to the rules of financial accounting in the RF, by the aggregate of the expenses for its production. No other indicators (including, for example, market quotes or the market value of analogous property) can be taken as the factual value of what has been allegedly stolen, and, correspondingly, as the amount of the damage sustained from the theft.

I37. Finally, as mentioned above in the applicants' replies to the Questions in Section G, the fact that the injured party suffered real damage in the form of direct losses, whilst a

[25] pp. 235-236 of his report at tab 140 to this Reply.

necessary element of theft, in and of itself does not conclusively indicate that theft took place, because the owner of property may, for various reasons (charity, sale at a substantial discount) knowingly and willing accept such real damage in the form of direct losses. Damage can only be evidenced by such real damage in the form of direct losses, which the injured party sustained as a result of illegal removal of the property from it against its will.

I38. With respect to the present case (under which the applicants were charged with and found guilty of theft by way of misappropriation of all the oil produced by three subsidiary producing entities of the Yukos company), the only thing that can be understood as the factual value of "what had been stolen", which forms the amount of the damage, is the sum of the expenses of the "injured parties" for the production of this oil (its extraction from the subsoil, treatment (i.e. bringing it to the requisite standard) and surrender to the pipeline company). However, the factual value of the oil calculated in that manner that was alleged to have been "stolen" was not determined within the framework of the "second" case; any mention of it is absent in the charge and the verdict. See the conclusion of Professor Naumov in his expert report:

> "In the court's verdict, the causing to the injured parties (injured parties in the opinion of the court) of real pecuniary damage as the result of their having entered into agreements with the defendants for the sale-and-purchase of the produced oil is not proven. The absence of the indicated *sine qua non* features of theft of another's property allows the assertion to be made that not only is the *corpus delicti* of misappropriation of another's property (art. 160 CC RF) absent in the actions of M.B. Khodorkovsky and P.L. Lebedev, but the *corpus delicti* of any other theft is as well."[26]

I39. Moreover, as early as in 2010, the state-owned Rosneft itself, which, as a result of the expropriation of Yukos was joined by all three companies – the 'victims', confirmed in its written replies to the court's enquiry in relation to this case that throughout the entire period of 1998-2003 the revenue from the sales of oil of each of the companies ('victims') always substantially exceeded the actual cost (cost price) of oil, i.e. its production costs.[27] Clearly, under such circumstances there can be no talk of any "damages caused by the theft of oil." Furthermore, as specified above in the answers to the Court's questions in Section G, in its official financial statements Rosneft stated the

[26] p. 235 at tab 140 to this Reply.
[27] See tabs 134-136 to this Reply. They are found in the case materials at Vol 268, pp. 103,105 and 107.

following: "*The sale of products to companies in the YUKOS group was conducted on regular commercial terms at market prices.*"[28]

Question 46. Did the second judgment take account of the amounts which the producing entities failed to pay to the State in the form of taxes, given that the group's profits were concentrated in trading companies registered in the low-tax zones (ZATOs)? The Government are invited to refer to the relevant parts of the judgment analysing that element. If the applicants have already been punished for not paying taxes to the State in respect of the operations imputed to Yukos, is it justified, under Article 4 of Protocol No. 7 to the Convention, to punish them again for "pocketing" part of the profits of the producing companies, which would in any event have gone to the State as taxes?

SUMMARY OF THE GOVERNMENT'S RESPONSE

I40. The Government do not substantially respond to the Court's questions. The Government do, however, acknowledge that at the time the verdict was delivered tax evasion charges under Article 198 and 199 of the RF Criminal Code are expressly excluded from the legalisation (laundering) definition in Article 174.1 of the RF Criminal Code (paragraph 363 of the Memorandum).

APPLICANTS' REPLY TO THE COURT'S QUESTIONS

I41. First and foremost, the applicants reiterate that within the framework of the "second" case they were charged with and found guilty of theft by way of misappropriation of all the oil produced by three subsidiary producing entities of the Yukos company, and not with having "pocketed" a "*part of the profits of the producing companies, which would in any event have gone to the State as taxes*", or indeed any other part of the profit of these companies. Furthermore, the trial court stated in the verdict that "*It is impossible to steal figures which exist in accounting records, but it is possible to commit theft of oil which is a material value, which is property.*"[29] No official charge of theft of any monetary funds whatsoever was ever brought against the applicants within the framework of the "second" case.

I42. In that regard it is also to be noted that pursuant to the RF legislation, the profits of a joint-stock company, as well as the right to dispose of them, belong to the shareholders as

[28] See tab 52 to this Reply. This is found in the case materials at Vol. 264, p.170.
[29] See p.659 of the verdict at at Volume C, tab C31, of the November 2011 Memorial.

represented by authorised governing bodies, but by no means to the company itself.[30] Given that Yukos was (a) initially the majority (controlling) and, subsequently, sole shareholder of the production subsidiaries; and (b) the entire profits obtained in the context of the Yukos group of companies has been fully distributed by the authorised governing bodies (a fact which was never disputed[31]); (c) the applicants were *de facto* controlling shareholders in Yukos, it was not possible for the applicants to steal ("pocket") any profits earned by those subsidiaries from the perspective of applicable law.

I43. On the other hand, it is abundantly clear that if the "injured parties" (the production subsidiaries) had had (as alleged) all their output in the form of produced oil stolen, then there is no way they could have received any proceeds at all from the sale of that which had been stolen from them, let alone any profits from that sale. Neither the "injured parties" themselves nor the prosecution and the court ever disputed the following documentarily corroborated facts:

a) there was no shortfall whatsoever of oil and/or monetary funds detected by the production subsidiary companies;

b) the producing entities received and entered into their accounts the proceeds from the sale of oil in the full amount provided for in the sales agreements;[32] and

c) the proceeds received by these companies from the sale of the oil provided them not only with full recompense of their production costs of the oil that had been allegedly stolen but what is more a very significant (around US $3 billion) profit specifically from the sale of this oil.

I44. It is perfectly obvious that each of these facts individually, and all the more so their aggregate, is more than sufficient for an unequivocal conclusion that no oil and no monetary funds accruing from the proceeds from the sale of the oil had been stolen from the production companies. Clearly, the claim itself of profits being received by the

[30] See Articles 42(1), (3) and (7), 48(1)(10.1), and (11) and 48(2) of the Federal Law on Joint-Stock Companies. The cited provisions are at tab 9 to this Reply.
[31] See further the applicants' arguments in relation to the Questions in Section G.
[32] Which irrefutably evidences the transfer of the ownership of oil from the seller (producer) to the buyer and evidences the seller's newly-emerged ownership of monetary funds obtained by it in the form of proceeds.

production companies (some of which someone supposedly took from them and "pocketed") completely nullifies the false allegation of theft of oil from them, since these companies had no other sources of profit. All this, however, did not impede the investigation from bringing a charge of "theft of all the produced oil" against the applicants, and the court from agreeing with it in the verdict.

I45. Accordingly there was not, and could not be in the verdict in the "second" case any account and offset of the sums figuring in the "first" case as taxes on the profit from the sale of the oil supposedly not paid by the production subsidiary companies. Indeed, and as has already been pointed out several times in this section and in Section G above, the prosecution and the court were not at all interested in the amount of the expenses of the production companies in relation to the production and sale of the oil, including also the tax component of those expenses.

I46. The mention in the Court's question that part of the producing entities' profits was supposedly being 'pocketed' is really a reflection of the manipulation of the RF authorities in pursuit of a dishonest aim – to avoid paying back the alleged 'victims' in the second trial (which joined the state-owned Rosneft as a result of the expropriation of Yukos) the loans previously obtained by them from the Luxembourg subsidiary Yukos Capital S.a.r.l. in accordance with the decisions of a number of courts and arbitral tribunals that Rosneft must repay these loans.[33] In order to assist Rosneft avoiding the fulfillment of its contractual obligations and the court decisions, the RF authorities

[33] Four written loan agreements were entered into in July and August 2004 between Yukos Capital S.a.r.l as lender and Yuganskneftegaz as borrower. In four arbitral awards of 19 September 2006 the International Commercial Arbitration Court at the RF Chamber of Commerce and Industry decided that Yuganskneftegaz must pay to Yukos Capital S.a.r.l a total of approximately 13 billion roubles (excluding interest and costs): see copies of the Awards at tabs 61-64 of this Reply. However, on 1 October 2006 following the expropriation of Yukos, Yuganskneftegaz merged with Rosneft, in which all assets and liabilities of Yuganskneftegaz were transferred to the state-owned Rosneft by universal title and Yuganskneftegaz ceased to exist. Consequently the company made a successful application to set aside the arbitral awards (see the Decrees of the Moscow District Arbitration Court of 13 August 2007 at tab 76 to this Reply). However, international courts have refused to recognise the decision to set aside the awards and have enforced the original arbitral awards – see for example the conclusion of the appeals court in Amsterdam that "*the judgments of the Russian civil court in which the arbitral awards were set aside were the result of a judicial process that must be qualified as* ***partial and dependent****, that these judgments cannot be recognised in the Netherlands. This means that in the assessment of the request by Yukos Capital to enforce the arbitral awards, the setting aside of these decisions by the Russian court must be ignored.*" (emphasis added, paragraph 3.10 of the judgment dated 28 April 2009 (Vol.267 pp.175-188 of the case materials), copy at tab 96 to this Reply. The court of appeal's judgment was upheld by the Supreme Court of the Netherlands in a judgment dated 25 June 2010 (Vol.267 pp.206-221 of the case materials) at tab 122 to this Reply. See also the decision of the US Court of Appeals Second Circuit dismissing a related challenge by Samaraneftegaz in *Yukos Capital SARL v OAO Samaraneftegaz*, 4 November 2014 at tab 163 to this Reply. There are a number of other international decisions and judgments to like effect.

included the advancement of these loans in the false charges of “legalisation” brought against the applicants, having artificially infused these loans with elements of criminality. This was done despite the fact that such assertions directly contradict both the said judicial decisions, which have come into legal force, and the other false allegation of “theft of all of the oil”.