

**OPINION No. 28/2005 (RUSSIAN FEDERATION)**

**Communication addressed to the Government on 25 February 2005.**

**Concerning Ms. Svetlana Bakhmina.**

**The State ratified the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of opinion No. 20/2004.)
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. (Same text as paragraph 3 of opinion No. 20/2004.)
4. The Working Group welcomes the cooperation of the Government, which provided it with comments on the allegations put forward in the communication. The source, to which those comments were transmitted, made observations on them. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made.
5. According to the information received, Ms. Svetlana Bakhmina, acting Head of the Legal Department at Yukos Oil Company since September 2004, was arrested on 7 December 2004 and is held in detention in Moscow, in connection with the charges brought against the Yukos Oil Company.

6. Ms. Bakhmina was arrested at 4 p.m. at the Procurator-General's Office in Moscow by officers of the Procurator-General's Office acting under the command of Senior Investigator S.K. Karimov. She had gone voluntarily to the Procurator-General's Office at 1 p.m. in response to a summons to appear as a witness. She was questioned for several hours. At 10 p.m., Ms. Bakhmina lost consciousness and was taken to a hospital. At 3 a.m. the next morning she was released from the hospital in response to pressure from the Prosecutor-General's Office. She was conducted to the offices of the Ministry of Internal Affairs where, in the office of one Mr. Florensky, she was interrogated by four men. Ms. Bakhmina again lost consciousness, but this time no medical treatment was provided. Ms. Bakhmina was interrogated for three days in succession.

7. It is alleged that Ms. Bakhmina was not allowed to have a defence lawyer present during her interrogation, in contravention of article 53 of the Criminal Procedure Code of the Russian Federation. Her interrogation also violated article 187 of the Criminal Procedure Code, which states that no interrogation shall be conducted for more than four hours without a break.

8. During the course of her interrogation, threats were made against Ms. Bakhmina and her family. She was also told that in order to be released she would have to provide the information requested by her interrogators. At no time during her questioning was Ms. Bakhmina allowed to contact her family or to receive information on the state of health of her 3-year-old daughter, who is gravely ill.

9. On 10 December 2004, Ms. Bakhmina appeared before the Basmanniy Court in Moscow. The court rejected bail for Ms. Bakhmina and ruled that her detention should continue. Ms. Bakhmina appeared in court again in early February 2005 at which time her detention was renewed until 2 May 2005. It appears that her detention was ordered for the purpose of preventing her from absconding and interfering with evidence in relation to an investigation into an economic crime.

10. Ms. Bakhmina was charged, under section 3, article 160, of the Criminal Code of the Russian Federation entitled "Appropriation or waste", with the theft of property worth approximately 18 billion rubles (about US\$ 650 million) from a Yukos subsidiary in 1998. She was also charged with offences that occurred in 1997 in connection with Yukos' purchase of shares of the Vostochno-Neftyanaya Company.

11. According to the source, Ms. Bakhmina's was in fact detained for purposes other than those permitted by the law. She is being held in order to prevent her from carrying out her duties as a senior lawyer for Yukos. Ms. Bakhmina was to prepare the annual Yukos shareholders' meeting that was scheduled for 20 December 2004 and to take important decisions regarding the sale of Yganskneftegaz, which was to take place on 19 December 2004. According to the stated purpose of the investigators, she is also being held as a hostage pending the return to Russian territory of her superior, the Head of the Legal Department of Yukos Oil Company, Dmitry Gololobov, whose flight to London allegedly enraged investigators. Ms. Bakhmina was told that she would remain in detention until Mr. Gololobov returned to Moscow and appeared at the Prosecutor's Office.

12. It is said that even if the detention of Ms. Bakhmina were properly motivated, it is disproportionate to the attainment of its purpose. Ms. Bakhmina has no criminal record. She

could have been released on bail with sufficient conditions to ensure that she neither absconded nor interfered with evidence. Such conditions were offered, but were rejected. According to article 108 of the Criminal Code of the Russian Federation, placing somebody under arrest is an ultimate measure of restraint, which should be resorted to solely if other, less severe measures cannot be applied.

13. The source further reports that following Ms. Bakhmina's arrest, the Procurator-General's Office issued a prejudicial public statement, which represents a clear breach of the principle of presumption of innocence: "The prosecutors now have every reason to say that the actions of those implicated in the so-called 'Yukos affair' were essentially those of dirty thieves ... It is now clear that Yukos executives, managers and other staff alike were drawn into a range of criminal activities ... The law was broken for a long time, grossly and cynically. The time has now come to reap what one has sown."

14. Finally, it is contended that Ms. Bakhmina's lawyers have been prevented from contacting their client during a particularly critical time after her arrest, making it more difficult for them to organize her defence.

15. In its observations on the allegations of the source, the Government made the following presentation of the facts of the case.

16. The Department for the Investigation of Especially Important Cases in the Office of the Procurator-General of the Russian Federation is handling criminal proceedings against Svetlana Bakhmina, one of the heads of the legal department of the Yukos oil company, in connection with the theft of property worth over 9 billion rubles from the Tomskneft company, and also failure to pay taxes in the amount of 604,040 rubles.

17. During the investigation, sufficient evidence was gathered to justify the indictment of Ms. Bakhmina for offences under article 160, part 2, paragraph (c), and part 3, paragraphs (a) and (b), of the Criminal Code of the Russian Federation (appropriation or conversion) and article 198, part 2 (failure by an individual to pay taxes).

18. On 7 December 2004, Ms. Bakhmina was detained as a suspect. On 10 December 2004, the Basmanny court in Moscow ordered her to be remanded in custody as a preventive measure. When taking this decision, the court took into account Ms. Bakhmina's occupation, her positive characteristics, her state of health and her family situation, as well as the fact that she has two minor children. The court also considered available indications of the suspect's intention to travel abroad to evade the investigation and to obstruct the inquiries. The criminal division of Moscow city court found the lower court's decision to remand Svetlana Bakhmina in custody to be lawful and well founded.

19. Subsequently, when Ms. Bakhmina's remand in custody was extended, the conditions of her detention and the grounds for the application of this preventive measure to her case were reviewed more than once by various courts. No violations of the law were found to have taken place.

20. After Ms. Bakhmina's lawyer lodged a declaration alleging unlawful actions committed by personnel of the Russian Ministry of Internal Affairs following her arrest and abuses during

her questioning, checks were carried out. The report that unlawful actions had been taken against her was not substantiated. On 14 February 2005 it was decided not to institute criminal proceedings in respect of these allegations.

21. The investigations concerning the accused person have been conducted in strict compliance with the applicable Russian legislation governing criminal procedure. She has been able to meet her lawyers without any restrictions on the length or nature of the meetings.

22. The criminal proceedings against Ms. Bakhmina have now been completed and, once she has examined the case file, it will be forwarded to the court for consideration of the substance of the case.

23. Commenting on the observations made by the Government, the source takes issue with elements of the Government's presentation of the events surrounding the arrest and detention of Ms. Bakhmina and deplors the fact that the Government failed to address all the substantive allegations of the communication. It also intimates that Ms. Bakhmina is a victim of trumped-up charges, and her detention merely serves to compel those high-ranking leaders of Yukos who fled from prosecution to the United Kingdom and whose extradition to Russia was denied to return to the Russian Federation.

24. Ms. Bakhmina was arrested on 7 December 2004. According to the information provided by the Government and not contested by the source, the investigation in Ms. Bakhmina's case is close to completion and the charges against her will soon be brought before a court. Bearing in mind the complexity and the seriousness of the charges, the duration of the investigation and the time spent in pretrial detention does not seem to the Working Group to be unreasonably long. She was able to challenge her detention before a court several times, but the courts did not find her detention unlawful.

25. The Working Group is of the opinion that the alleged procedural irregularities referred to by the source - insufficient health care provided to Ms. Bakhmina when she lost consciousness, refusal of her request for bail, prohibition of family contacts, prejudicial statement made by the Procurator-General's Office undermining her right to be presumed innocent until found guilty - many of which were contested by the Government, are not of such gravity as to confer on the deprivation of liberty an arbitrary character.

26. The source also stated that Ms. Bakhmina was not allowed to have a defence lawyer present during her interrogation. However, this is contradicted by the statement in the Government's observations, not contested by the source, that Ms. Bakhmina's lawyer lodged a complaint with the authorities of unlawful actions by the Russian Ministry of Internal Affairs. Nor did the source refute the assertion of the Government that Ms. Bakhmina has been able to meet her lawyers without any restriction on the length and nature of the meetings.

27. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Ms. Svetlana Bakhmina is not arbitrary.

Adopted on 31 August 2005