

PETITION TO
UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Mr. Seong-Phil Hong (Republic of Korea)
Vice-Chair: Ms. Leigh Toomey (Australia)
Vice-Chair: Ms. Elina Steinerte (Latvia)
Mr. José Guevara (Mexico)
Mr. Sètondji Roland Adjovi (Benin)

HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of
ALEXEY VLADIMIROVICH PICHUGIN
Citizen of the Russian Federation

v.

The Russian Federation

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/7,
and 33/30.¹

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¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d] . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights” pursuant to UN General Assembly Resolution 60/251, G.A. Res. 60/251, ¶ 6 (Mar. 15, 2006), has further extended the mandate through Resolutions 6/4, 15/18, 20/16, 24/7, and 33/30.

INTRODUCTION

As set forth below, the Russian Federation (Russia) is arbitrarily depriving Alexey Vladimirovich Pichugin of his liberty for political reasons. Pichugin was originally arrested on June 19, 2003 and framed for multiple counts of murder and attempted murder. During his first trial (Pichugin I), there were egregious violations of his due process rights. He was nonetheless convicted and sentenced in 2005 to 20 years in prison. In a second, equally-flawed trial (Pichugin II) in 2006, he was framed for additional murder and attempted murder charges and sentenced to 21 more years in prison. This sentence was increased, after a retrial, to life imprisonment. The cases were replete with violations of the International Covenant on Civil and Political Rights (ICCPR), to which Russia is a state party:

- Arrest Without a Warrant – Article 9(2)
- Violation of the Presumption of Bail – Article 9(3)
- Violation of Right to a Public Hearing – Article 14(1)
- Violation of Right to Access Counsel and to Adequate Time to Prepare Defense – Article 14(3)(b) and 14(3)(d)
- Violation of Right to Cross-Examine and Present Key Witnesses – Article 14(3)(e)
- Violation of the Right to the Presumption of Innocence – Article 14(2)

In reality, Pichugin is simply the last remaining hostage of a political struggle between Russian President Vladimir Putin and three of Putin's most prominent political opponents: Russian businessmen Mikhail Khodorkovsky and his associates Leonid Nevzlin and Platon Lebedev. At the time of his arrest, Pichugin was employed as a mid-level security manager at Russian oil company Yukos, which was controlled by Khodorkovsky. By the early 2000s, Yukos had become the second-largest and fastest-growing oil company in Russia, threatening the power of state-controlled companies like Gazprom.² Simultaneously, Khodorkovsky became increasingly critical of Putin's government and began to actively fund opposition parties.³

In 2003, alleging that Yukos had abused the tax scheme and paid insufficient taxes for the past several years, Russia demanded over U.S. \$40 billion dollars from the company.⁴ Ultimately, Yukos was broken up and sold to state-controlled Russian energy firms.⁵ Over the last 15 years, the overwhelming international consensus has been that the destruction of Yukos was engineered for political reasons – to destroy Khodorkovsky and to send a message to other potential political opponents. In 2014, the largest arbitration award in history – U.S. \$50 billion

² Courtney Weaver, *Timeline: The Rise and Fall of Yukos*, FINANCIAL TIMES, July 28, 2014, available at <https://www.ft.com/content/f371c836-1645-11e4-93ec-00144feabdc0> and Sabine Leutheusser-Schnarrenberger, Rapporteur of the Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe, THE CIRCUMSTANCES SURROUNDING THE ARREST AND PROSECUTION OF LEADING YUKOS EXECUTIVES, Doc. 10368, Nov. 29, 2004, at § 3, ¶ 71, available at <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10730&lang=EN> [hereinafter *PACE Rapporteur Report*].

³ *PACE Rapporteur Report*, supra note 2, at § III, ¶ 69.

⁴ *Hulley Enterprises Limited v. Russian Federation*, Permanent Court of Arbitration, July 18, 2014, at pp. 174-177, available at <https://www.pcacases.com/web/sendAttach/418> and *Government of the Russian Federation v. Dmitry Maruev and Natalya Chernysheva*, Mar. 18, 2005 (Bow Street Magis. Ct.) (U.K.), available at https://pichugin.org/wp-content/uploads/2018/02/BowStreet_Maruev_et_al.pdf (on page 6 of the PDF).

⁵ Keith Johnson, *What's Really Happening with the Yukos Case*, FOREIGN POLICY, June 19, 2015, available at <https://foreignpolicy.com/2015/06/19/whats-really-happening-with-the-yukos-case-russia-putin-belgium-france/>.

– was awarded by the Permanent Court of Arbitration to former Yukos shareholders based on the panel’s conclusion from the evidence that Yukos was unlawfully expropriated by the Russian state.⁶ While this award was later overturned on the basis that the Permanent Court of Arbitration did not have jurisdiction to rule in the Yukos case, it was not overturned on the substance of the ruling.⁷

While Pichugin himself is apolitical, the political nature of his case has been evident from the moment of his arrest. He has been the victim of an extended conspiracy to frame him for crimes he did not commit. Serious violations of due process have marred his detention and trials. Moreover, Pichugin was repeatedly pressured in interrogations to give testimony against Khodorkovsky and Lebedev, despite the fact that he was not charged with any economic crimes nor with any crime related to Khodorkovsky or Lebedev. Critically, the European Court of Human Rights (European Court) found in two separate cases that Russia’s treatment of Pichugin violated various articles of the European Convention on Human Rights, to which Russia is a state party. In both decisions, the European Court called for Pichugin’s case to be retried.⁸

The sheer number of violations of domestic and international law in Pichugin’s case have attracted significant international concern. In 2004, the Parliamentary Assembly for the Council of Europe (PACE) appointed a former German Minister of Justice as an independent rapporteur to investigate Pichugin’s and other Yukos cases. After visiting Russia and interviewing defense counsel, she identified a wide array of concerns in Pichugin’s case and in the cases of other Yukos-affiliated detainees, including allegations of interference with the right to counsel, unfair limitation of time to study case files, unjustified restrictions on publicity of court hearings, mistreatment in detention, violations of trial procedures, and an absence of adequate safeguards.⁹ Subsequently, PACE itself adopted a resolution stating that the “serious procedural violations committed . . . against . . . Mr. Pichugin . . . have been corroborated during fact-finding visits.”¹⁰

Significantly, courts in the United Kingdom,¹¹ Lithuania,¹² Cyprus,¹³ and Israel¹⁴ have all refused Russian requests for extraditions connected to the Yukos case, and several of these

⁶ Neil Buckley, *Former Yukos Shareholders Awarded \$50bn in Damages against Russia*, FINANCIAL TIMES, July 28, 2014, available at <https://www.ft.com/content/f5824afa-1623-11e4-8210-00144feabdc0>.

⁷ Mike Corder, *Dutch Court Quashes \$50 Billion Yukos Shareholders’ Award*, ASSOCIATED PRESS, Apr. 20, 2016, available at <https://apnews.com/11f45a28420443c59df7dc6d6888c166/dutch-court-quashes-50-billion-yukos-shareholders-award>.

⁸ In both decisions, immediately after finding that Pichugin’s rights under Article 6 of the European Convention on Human Rights had been violated by Russia, the European Court stated that “when an applicant has been convicted despite a potential infringement of his rights as guaranteed by Article 6 of the Convention he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be trial de novo or the reopening of the proceedings, if requested.” See *Pichugin v. Russia*, App. No. 38623/03, Eur. Court of Human Rights, Oct. 23, 2012, at ¶ 219, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-114074%22%5D%7D> and *Pichugin v. Russia*, App. No. 38958/07, Eur. Court of Human Rights, June 6, 2017, at ¶ 47, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-174061%22%7D%7D%7D>.

⁹ *PACE Rapporteur Report, supra* note 2 (see Section III, Explanatory memorandum by Mrs. Leutheusser-Schnarrenberger, Rapporteur).

¹⁰ *Resolution 1418 on The Circumstances Surrounding the Arrest and Prosecution of Leading Yukos Executives*, PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE, adopted Jan. 25, 2005, at ¶ 7, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17293&lang=en>.

¹¹ In a decision mentioning Pichugin’s case, among others, it was found that “there is a risk that if returned [the defendants] would not receive a fair trial.” *Government of the Russian Federation v. Dmitry Maruev and Natalya Chernysheva*, Mar. 18, 2005 (Bow Street Magis. Ct.) (U.K.), available at https://pichugin.org/wp-content/uploads/2018/02/BowStreet_Maruev_et_al.pdf (on PDF page 8); see also *Government of the Russian*

decisions have specifically cited to Pichugin's case. Pichugin's case has also been raised by Amnesty International¹⁵ and in testimony before the U.S. House of Representative's Commission on Security and Cooperation in Europe.¹⁶ Memorial Human Rights Center¹⁷ and Freedom House¹⁸ have both designated Pichugin a political prisoner, and the Raoul Wallenberg Centre for Human Rights¹⁹ has recognized Pichugin as a prisoner of conscience.

Accordingly, it is hereby requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reconfirmed by Resolutions 2000/36 and 2003/31, and Human Rights Council Resolutions 6/4, 15/18, 20/16, 24/7, and 33/30.

QUESTIONNAIRE FOR ALEXEY PICHUGIN

I. IDENTITY

1. **Family name:** Pichugin
2. **First name:** Alexey Vladimirovich
3. **Sex:** Male
4. **Birth date:** July 25, 1962
5. **Nationality:** Russian Federation
6. **(a) Identity document (if any):** Passport
(b) Issued by: Russian Federation
(c) On (date): August 26, 1998
(d) No.: 45 97 169524
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):**

Federation v. Alexander Viktorovich Temerko, 23 Dec. 2005, at 9 (Bow Street Magis. Ct.) (U.K.), available at <https://pichugin.org/wp-content/uploads/2018/02/BowStreet-Temerko.pdf> (denying extradition of senior Yukos official).

¹² *Court Ruling in the Name of the Republic of Lithuania*, Oct. 23, 2006 (Ct. App.) (Lith.), available at https://pichugin.org/wp-content/uploads/2018/02/Lithuania_Babenko_Appeal_Court.pdf.

¹³ *Regarding the Application of the Russian Federation for the Extradition of Kartashov Vladislav of Nikolai from Russia*, Apr. 10, 2008, at 55 (District Court of Nicosia) (Cyprus), available at <https://pichugin.org/wp-content/uploads/2018/02/Cyprus-Kartashov.doc> ("The charges faced by the respondent in Russia are tainted with political motives In the event that the respondent is extradited to the Russian Federation, there is a real risk that his right to a fair Trial will be flagrantly violated.").

¹⁴ *Petition for the Award of an Order Nisi, Yuli Nudelman v. Minister of Interior*, May 14, 2008 (Supreme Court) (Isr.), available at https://pichugin.org/wp-content/uploads/2018/02/Israel_Nevzlin.pdf.

¹⁵ Press Release, *Russian Federation: The Case of Mikhail Khodorkovskii and Other Individuals Associated with YUKOS*, AMNESTY INT'L, Apr. 11, 2005, available at <https://www.amnesty.org/download/Documents/84000/eur460122005en.pdf>.

¹⁶ THE YUKOS AFFAIR AND ITS IMPLICATIONS FOR POLITICS AND BUSINESS IN RUSSIA, COMMISSION ON SECURITY AND COOPERATION IN EUROPE, July 13, 2005, available at <https://www.csce.gov/sites/helsinkicommission.house.gov/files/The%20Yukos%20Affair%20and%20its%20Implications%20for%20Politics%20and%20Business%20in%20Russia.pdf>.

¹⁷ Press Release, *List of Individuals Acknowledged by Memorial Human Rights as Political Prisoners*, March 1, 2018, MEMORIAL HUMAN RIGHTS CENTER, available at <https://pichugin.org/wp-content/uploads/2018/03/March-1-2018-Political-Prisoners-List-English.pdf>.

¹⁸ Sergio Galeano & Tyler Roylance, *Why Putin is Not Okay*, FREEDOM HOUSE, Jul. 11, 2018, available at <https://freedomhouse.org/blog/why-putin-not-okay>.

¹⁹ Irwin Cotler, *For the Sake of Human Rights, We Must Stand for the Nameless*, THE HILL, Feb. 16, 2018, available at <http://thehill.com/opinion/civil-rights/373756-for-the-sake-of-human-rights-we-must-stand-for-the-nameless>.

- Yukos Oil Company – Manager, Economic Security division of Security Dept.
- 8. Address of usual residence:** 9-3-141 Chertanovskaya St., Moscow, Russia

II. ARREST

- 1. Date of arrest:** June 19, 2003, at approximately 8 am local time.
- 2. Place of arrest (as detailed as possible):** Pichugin was arrested at his Moscow residence before leaving for work.
- 3. Forces who carried out the arrest or are believed to have carried it out:** Pichugin was arrested by 22 armed men, including a colonel from the General Prosecutor’s Office (GPO) of the Russian Federation, three representatives of the Moscow Region Federal Security Service (FSB) and 18 FSB “Alpha unit” members, fully armed.
- 4. Did they show a warrant or other decision by a public authority:** No.
- 5. Authority who issued the warrant or decision:** N/A
- 6. Reasons for the arrest imputed by the authorities:** Pichugin understood that he was being detained but was not told why he was being detained nor that he was in fact under arrest. He was taken to a GPO facility for interrogation. Once there, he was told that he was a suspect in the disappearance of Sergei and Olga Gorin. After the initial interrogation, Pichugin was informed that he was suspected of having murdered the Gorins.
- 7. Legal basis for the arrest including relevant legislation (if known):** Pichugin was first charged on June 26, 2003, under Article 30 (“Attempted Crimes”), Article 33 (“Types of Accomplices of a Crime”), and Article 105 (“Murder”) of the Russian Criminal Code.

III. DETENTION

- 1. Date of detention:** June 19, 2003.
- 2. Duration of detention (if not known, probable duration):** Ongoing and indefinite. Pichugin has been sentenced to life in prison.
- 3. Forces holding the detainee under custody:** Russian Federal Penitentiary Administration
- 4. Place of detention (indicate any transfer and present place of detention):**
June 19, 2003 – October 2004: Lefortovo Prison (at that point, an FSB facility)
October 2004 – March 2008: Matrosskaya Tishina Prison
March 2008 – April 2008: Black Dolphin Prison
April 2008 – May 2008: Investigative Detention Facility No. 99/1
May 2008 – June 2016: Black Dolphin Prison
June 2016 – April 2017: Lefortovo Prison
April 2017 to Present: Black Dolphin Prison
- 5. Authorities that ordered the detention:** Ostensibly, the GPO ordered Pichugin’s detention, as he was detained pursuant to the criminal investigation into the Gorin case. However, Pichugin was arrested and interrogated by individuals from both the FSB and the GPO, and he was physically detained beginning on June 19, 2003, in an FSB-controlled facility. Then, on June 21,

2003, following a request by the GPO investigator, the Basmany District Court ordered him remanded in custody, and thereafter it was the decision of the courts to detain him.

6. **Reasons for the detention imputed by the authorities:** It was alleged by the prosecution that Pichugin could not be released because of the seriousness of the charges against him; the danger that he might abscond, tamper with evidence or witnesses, or commit additional crimes; and the need to complete additional investigative actions and analyze evidence.
7. **Relevant legislation applied (if known):** Pichugin was originally detained pursuant to Articles 91 and 92 of the Criminal Procedure Code of the Russian Federation. Under Article 91 (“Grounds for the Detention of the Suspect”), a suspect may be detained if witnesses identify the suspect as the perpetrator of a crime, or if other evidence exists pending a court’s determination of the proper measure of restriction. Article 92 informs the application of Article 91. Later, after Pichugin appeared before the Basmany District Court on June 21, 2003, he was detained under Article 97(1) (“Grounds for Selecting a Measure of Restriction”), which lists the factors for determining what measure of restriction is appropriate, including pretrial detention.

CIRCUMSTANCES OF THE ARREST AND DETENTION OF ALEXEY VLADIMIROVICH PICHUGIN

I. Statement of Facts

A. Biography of Pichugin

Alexey Vladimirovich Pichugin was born in 1962 and is a citizen of the Russian Federation. Educated at a professional military academy, Pichugin graduated in 1983 and spent the next decade working for government security units – including the Russian Interior Ministry and the Committee for State Security (the KGB, precursor to the FSB) – before transitioning into private security in 1994 and assuming a position with the commercial bank, Bank Menatep. Bank Menatep obtained a controlling stake in Yukos in 1995²⁰ and Pichugin subsequently began to work in Yukos’s security division.

By 2003, Pichugin served as the manager of Yukos’s economic security group within the company’s Security Department – one of half a dozen managers who reported to the head of Yukos’s Security Department. The economic security group secured the company’s real estate, vetted new employees, and investigated allegations of theft within the company.

At the time of his arrest, Pichugin was married with three young sons. He had no criminal history. Furthermore, Pichugin was not politically active, and, other than sometimes providing personal security for them, Pichugin did not have substantive contact with the executive management of Yukos, such as Khodorkovsky and Lebedev.

B. Arrest and Detention

²⁰ Courtney Weaver, *Timeline: The Rise and Fall of Yukos*, FINANCIAL TIMES, Jul. 28, 2014, available at <https://www.ft.com/content/f371c836-1645-11e4-93ec-00144feabdc0>.

On the morning of June 19, 2003, at approximately 8 am local time, the doorbell rang at Pichugin's apartment at 9-3-141 Chertanovskaya Street, Moscow. Upon answering the door, Pichugin was confronted by a uniformed GPO colonel who was accompanied by three FSB staffers and 18 "Alpha unit" armed FSB agents. These individuals searched Pichugin's residence for more than four hours. While Pichugin's lawyers arrived approximately 30 minutes after the search began, they were not permitted to enter the residence. Pichugin's workplace was also searched.

After the search was completed, Pichugin was handcuffed, taken to the GPO office, and interrogated. During part of that interrogation, two of the "Alpha Unit" FSB agents were present, but Pichugin's own lawyer was not permitted to attend the interrogation. At this time, Pichugin was questioned about the disappearance of Sergei and Olga Gorin, a couple he had known from the Tambov region who were reportedly abducted by a group of armed men on November 20, 2002.

Pichugin was then informed that he was suspected of having arranged the murder of the Gorins based on "witness testimony and other materials," though the bodies of the Gorins had never been found. Pichugin was formally made a suspect in the case around 7 pm that same day. He was not, however, charged with the crime. Pichugin was then held in pre-trial detention at Lefortovo Prison. Notably, Lefortovo Prison is run by the FSB and not the Ministry of Justice. No explanation was provided as to why he was being detained by the Russian intelligence service.

1. Filing of Charges Against Pichugin

On June 26, 2003, Pichugin was formally charged under Article 105 ("Murder") of the Russian Criminal Code. He was also charged with crimes under Article 30 ("Preparations for a Crime and Attempted Crimes") and as an accomplice under Article 33 ("Types of Accomplices of a Crime"). These charges were filed five days after he was remanded to pre-trial detention, and on the eighth day after his original arrest. These charges were further refined in additional indictments on August 4, 2003 and on January 21, 2004.

The final charges were one count of double homicide, two counts of attempted murder, and one count of threat to harm.²¹

2. Repeated Extensions of Pre-Trial Detention

On June 21, 2003, Investigator Yuri Burtovoi requested the Basmany District Court of Moscow to select "custody" as the method of restraint in Pichugin's case. When asked by the defense to present evidence establishing a reasonable suspicion that Pichugin had committed the crimes in order to justify custody, the prosecutor refused, citing to the alleged "confidentiality" of the documents. The Court chose to detain Pichugin in preventative detention, declaring that Pichugin was accused of particularly serious crimes and therefore might abscond, interfere with the investigative proceedings, or commit another crime if released on bail. Burtovoi presented

²¹ Specifically, Pichugin was charged with attempted murder (Articles 30 and 105(2)(b), (f), (g), (h)) for the bombing near the apartment of Ms. Kostina's mother; attempted murder (Articles 30 and 105(2)(b), (g), (h)) for the mugging of Mr. Kolesov; double homicide (Article 105(2)(a), (g), (h), (j)) for the murder of the Gorins; and "Threat of Murder or Infliction of Grave Injury to Health" (Article 119).

no particularized evidence to the Court about any risk posed by Pichugin in relation to any of these claims.

Over the next year, before the case was referred to the Moscow City Court for trial, nearly a dozen renewed requests for bail and appeals of the denied requests were rejected, even when Pichugin was suffering from serious medical issues, including diabetes.

3. Pretrial Detention Conditions

From the date of his arrest on June 19, 2003, through October 2004, Pichugin was held at the FSB-controlled Lefortovo Prison. According to his counsel, during his detention there, Pichugin was repeatedly administered unlabeled medications that caused him to sleep almost constantly.

On the afternoon of July 14, 2003, Pichugin was interrogated for approximately five hours by two FSB agents who refused to reveal their full names but informed him they investigated “economic offences.” Pichugin’s counsel was not present. Pichugin was told that he should simply confess to the crimes and testify that Nevzlin ordered him to commit them. Pichugin refused. The agents offered Pichugin a cup of coffee, which he drank. Shortly afterwards, Pichugin lost feeling in his legs and felt a pounding in his head. He has no memory of the next several hours. After he was returned to his cell that evening, he discovered two injection marks – one between the thumb and forefinger of his right hand, and the other at the inside joint of his left elbow.

Pichugin’s counsel tried to visit him but was denied access. Two days later, defense counsel submitted a written request to Burtovoi requesting an immediate medical examination of Pichugin and demanding that he prevent any further interrogations or investigative actions from occurring outside the presence of counsel. The request was denied. Pichugin finally received a medical examination eight days later, but his counsel was not notified of the examination in advance, nor were they permitted to be present. Furthermore, the investigation conducted was superficial (lasting only a few minutes), and the investigator did not collect any specimens to identify the lingering presence of any psychotropic drugs, despite expert testimony provided to the defense affirming that psychotropic drugs can be detected in hair and nail specimens for months after ingestion.

Pichugin’s counsel also filed appeals with the GPO and FSB asking for an investigation into the potential use of unlawful interrogation methods. In August 2003, this request was denied. In September 2003, defense counsel received a communication from the FSB that there were no records of any investigative actions involving Pichugin on July 14, 2003. Successive appeals to the District Court, Moscow City Court, and Court of Appeals were denied, and on January 8, 2004, Burtovoi closed the proceedings against the two FSB agents named in the appeals. The PACE rapporteur later expressed deep concern over the complaints filed by Pichugin and the inadequate response of authorities to such serious allegations.²²

Pichugin was also questioned approximately 10 to 15 times about Yukos outside the presence of his lawyers and pressured to give testimony against Khodorkovsky and Nevzlin. He was told that his lawyers did not know what was in his best interests and that he should implicate Khodorkovsky and Nevzlin. Pichugin consistently maintained his innocence and said he had no information to provide about Khodorkovsky, Nevzlin, or anybody else.

²² *PACE Rapporteur Report, supra* note 2.

In January 2004, the investigation into Pichugin was finally completed and his counsel was permitted to study the case file. There were more than 7,000 documents in the file and counsel was required to physically go to a small, poorly-lit room at the court to access and study the material, which was composed not infrequently of handwritten interrogation notes. Pichugin and counsel were allowed to study the materials for only a few hours per day and, on at least one occasion, they were not permitted to make copies or excerpts of the documents, even at their own expense. This slowed the review process substantially. In May 2004, the prosecution accused Pichugin's counsel of drawing out the document review process. On May 21, 2004, the Court set a deadline of June 4, 2004 for the defense to complete the document review. On June 11, 2004, Pichugin and his co-defendant, Alexei Peshkun, were committed for trial, and Pichugin requested a trial by jury.

C. Pichugin I

1. Background of Criminal Charges Against Pichugin

Pichugin's first trial was focused on the charges that he murdered the Gorins and attempted to murder two other individuals, Olga Kostina and Viktor Kolesov. As stated previously, the Gorins were reportedly abducted by a group of armed men on November 20, 2002. The remaining two victims in the case had not been injured: a homemade bomb exploded outside of the apartment of Kostina's mother in 1998 and Kolesov was reportedly mugged and robbed in 1998, though he was not physically hurt.

2. Initial Trial Proceedings

The preliminary hearings for Pichugin's first trial were held in June and July 2004, before Judge N.I. Olixver of the Moscow City Court. During those hearings, counsel requested a public trial by jury. The lawyers also complained that they had been denied access to a number of documents from Pichugin's case file on the basis that these documents contained "state secrets." They requested an explanation of why those materials had been classified secret and argued that these secret documents should not be admitted as evidence. In response, the judge asked counsel to sign a non-disclosure agreement promising not to disclose the secret documents. Counsel refused, stating that they had not been informed which documents were secret and for what reason.

On July 30, Judge Olixver ordered that Pichugin be tried by a jury *in camera*, as the "secret" documents would be discussed in the course of the trial. The Court refused his counsel's request for a copy of the decision classifying the documents. Notably, only approximately 60 of the more than 7,000 documents in the case file were classified as "secret." In light of the routine street crimes of which Pichugin was accused, even that number was suspect at best. Regardless, on September 22, 2004, counsel asked the Court to make the majority of the trial public, with just a small portion of the trial involving the allegedly "secret" documents closed. This request was dismissed by the Court out of hand. On October 4, 2004, the questioning of witnesses began in Pichugin's first trial. Pichugin adamantly denied his involvement in any of the crimes of which he was accused and exercised his right not to testify.

3. Presentation of Evidence and Witnesses at the First Trial

There was no physical or direct evidence presented at the trial linking Pichugin to any of the crimes of which he was charged. There were no documents, letters, phone records, blood traces, hairs, fibers, fingerprints, surveillance evidence, or any other evidence implicating Pichugin. Instead, the decisive evidence at the trial turned on the hearsay and double-hearsay testimony of Pichugin's co-defendant and of other previously-convicted felons.

Some of the testimony against Pichugin was provided by his co-defendant Alexei Peshkun, who had been Gorin's driver. Peshkun testified that in August 1998, Gorin told Peshkun that Pichugin had hired him to intimidate Kostina and Kolesov. Supposedly, Peshkun then put Gorin in contact with four mercenaries whom Gorin later hired to harass and then kill Kostina and Kolesov. Over the course of the next year, according to Peshkun's account, the relationship between Gorin and Pichugin soured, and Gorin began to blackmail Pichugin in 2000, threatening to "reveal" Pichugin's role in hiring the four mercenaries.

One of those mercenaries, Igor Korovnikov, also provided key testimony at Pichugin's first trial. Korovnikov was a serial rapist and murderer who was already serving a life sentence in a maximum-security prison in Russia.²³ Korovnikov testified that Peshkun had put him in contact with Gorin, who had asked him to harass and kill Kostina and Kolesov. Korovnikov claimed that, on the night that the homemade bomb exploded in front of Kostina's mother's apartment, he saw Gorin ask for instructions from Pichugin, who was nearby in a parked car. Korovnikov further claimed that he had later contacted Pichugin directly in January 1999. Korovnikov claimed that Gorin told him Pichugin's orders had originated with Nevzlin.

The three other mercenaries allegedly hired by Gorin confirmed the circumstances of the explosion outside Kostina's mother's apartment but said they did not know who had ultimately hired them to kill Kostina and Kolesov.

While on the witness stand, Korovnikov claimed to have met Pichugin in 1999 but he was unable to pick Pichugin's photograph out of an array of pictures. Korovnikov claimed that Pichugin had inquired during the meeting about an attack on the Gorins, but that Korovnikov refused to be involved and that was the end of it. Korovnikov disclaimed any involvement in the Gorins' disappearance, which did not occur until the end of 2002, nearly three years later. Yet that 1999 meeting was the only "evidence" supposedly linking Pichugin to the Gorin's disappearance. Moreover, it was the only time that any of the alleged perpetrators claimed to have met Pichugin. Korovnikov also changed his testimony on various occasions while being interrogated, commenting on one of these occasions that his future was now "in the hands of the President of Russia," a reference to Vladimir Putin. Peshkun gave a number of inconsistent statements in his testimony and later recanted entirely, submitting a statement in writing on May 12, 2004, that all of his statements implicating Pichugin were made "under pressure and convincing by operational investigative staff" and requested that "all my statements be deemed invalid."

When Pichugin's counsel attempted to cross-examine Korovnikov, he refused to answer a series of their questions. When they reminded him that witnesses could be prosecuted for refusing to testify, Judge Olixver contradicted them and stated that the witness could refuse to answer questions. The judge further denied Pichugin's counsel the ability to question Korovnikov on his character and background, claiming that such questions weren't "relevant."

²³ *Russian Oligarch Accused of Murder*, PRAVDA REPORT, Jul 27, 2004, available at www.pravdareport.com/hotspots/crimes/27-07-2004/6351-nevzlin-0/

4. Dismissal of Jury and Retrial

On December 9, 2004, Judge Olixver dismissed the jury, claiming that seven jurors had refused to participate in the proceedings. It was believed that, in reality, the judge did this because she expected that the jury was going to acquit Pichugin. On January 25, 2005, a new jury was appointed, and the trial restarted. The key problems of the prior trial were repeated during the retrial. Judge Olixver denied the request for a public trial and the Court refused to allow Pichugin's counsel to question Korovnikov on his criminal record. To make things worse, during closing arguments, the prosecutor referred to information contained in pre-trial statements by a witness who testified at the first trial but not at the second trial.

On March 24, 2005, the new jury found Pichugin and his co-defendant Peshkun guilty on two counts of murder and two counts of attempted murder. On March 30, 2005, Pichugin was sentenced to 20 years in prison. On July 14, 2005, the Supreme Court of the Russian Federation upheld the conviction.

D. Pichugin II

On April 14, 2005, following the verdict in the first case, Pichugin was charged in a separate case with two counts of murder and four counts of attempted murder. On July 4, 2005, Pichugin was further charged with one additional count each of murder and attempted murder.

1. Background on Criminal Charges Against Pichugin

The focus of Pichugin's second trial was on the three counts of murder and five counts of attempted murder. Pichugin was charged with the murder of Valentina Korneyeva, a tea shop owner; two attempts to murder Evgeny Rybin, a Russian businessman; the murder of Rybin's driver, Nikolai Fedotov; and the attempted murder of Rybin's bodyguards, Alexei Ivanov and Evgeny Fillippov. He was then also charged with the murder of the Mayor of Nefteyugansk, Vladimir Petuxov, and the attempted murder of Petuxov's bodyguard, Vyacheslav Kokoshkin. It was alleged that Pichugin organized others at the behest of Nevzlin and other unidentified Menatep Bank and Yukos officials to murder Korneyeva, Rybin, and Petuxov, all of whom were claimed to have had business conflicts with Yukos.

2. Initial Trial Proceedings

On June 28, 2005, the two sets of cases were formally joined, and on July 5, 2005, the investigations by Inspector Burtovoi ended and Pichugin's counsel began to review the new allegations.

The very next day, Deputy Prosecutor General V. Kolesnikov appeared on multiple televised Russian news channels declaring Pichugin and Nevzlin's guilt. Kolesnikov claimed "in 1998, Pichugin, on the instructions of Nevzlin and other Yukos OC OJSC employees . . . organized the murder of Nefteyugansk mayor Petuxov."²⁴ This forced Pichugin to abandon his desire for a jury trial because these statements severely tainted the jury pool. Although Pichugin

²⁴ *The Prosecutor General of the Russian Federation Declared Nevzlin the Organizer of the Killers*, SEGODNYA, July 6, 2005, available at <https://www.segodnya.ua/oldarchive/c2256713004f33f5c225703500509f04.html>.

made repeated complaints to the judge and appellate courts about this statement, claiming it violated his right to the presumption of innocence, all his complaints were rejected.

Just two months later, on September 11, 2005, Burtovoi claimed the evidence of Pichugin's guilt was irrefutable during an interview with a Russian news channel. While discussing the investigation into Yukos Oil Company, Burtovoi stated: "Pichugin . . . has been charged with six more counts . . . crimes organized, among others, by Mr. Nevzlin Actually, all these crimes were organized and paid for by Mr. Nevzlin." Burtovoi added, "The gang [that killed Petuxov] was organized by Mr. Pichugin himself on the instructions of Mr. Nevzlin This has been proved, yes. It was funded directly by Nevzlin."²⁵ Again, repeated complaints to the judge and appellate courts about this statement were rejected.

On February 17, 2006, Pichugin's defense completed their review of the criminal case file against Pichugin and filed motions under Article 217 of the Russian Criminal Procedure Code to "summon to court witnesses and experts, and to familiarize Pichugin and his defense counsel with the search and detective files on Rybin, Korneyeva, [and] Petuxov." These motions to access this key evidence were all denied. The trial subsequently began on March 20, 2006 and ended on August 17, 2006.

3. Presentation of Evidence and Witnesses at the First Trial

Over the course of the trial, Judge V.G. Usov and the Moscow City Court heard evidence from Pichugin and four other co-defendants – Mikhail Ovsyannikov, Gennady Tzigelnik, Vladimir Shapiro and Evgeny Reshetnikov – as well from six victims, fifty-six witnesses, one specialist, and four experts. The Court also considered various documents from the criminal case file. As in Pichugin's first trial, there was no physical or other substantive evidence linking him to the underlying crimes. Instead, each charge was based on hearsay statements by co-defendants who confessed to the crimes during the investigation but claimed they had been hired by Gorin who allegedly told them, directly or through others, that Pichugin and ultimately Nevzlin directed the crimes. For example, Tzigelnik testified that the only information he received about the crimes was through Shapiro, who allegedly heard about them from Gorin. Shapiro testified that he did not know Pichugin, had never met him or attended meetings with him, and that he knew no employees of Yukos. Pichugin pled not guilty to all the charges against him and strenuously insisted he did not know any of the co-defendants.

Critically, all four co-defendants ultimately recanted their pre-trial statements to investigators implicating Pichugin. For example, during Pichugin's trial, Mikhail Ovsyannikov retracted his accusations against Pichugin, stating that, "All the evidence against Khodorkovsky, Nevzlin and Pichugin was given by me under pressure from the investigators."²⁶ Ovsyannikov explained that he'd given false evidence against Pichugin because a Russian investigator told him he would be branded the mastermind of the attack and "packed up" for 18 years unless he gave prepared testimony naming Pichugin, Nevzlin, and Khodorkovsky. Furthermore, when Gennady Tzigelnik and Evgeny Reshetnikov later appeared as witnesses at the *in absentia* trial of Nevzlin on the same charges that Pichugin was charged with, they both recanted their pre-trial statements, saying that they falsely testified against Pichugin and others under pressure from

²⁵ Vladimir Perekrest, *Pichugin's Lawyers Sued the Prosecutor General's Office*, IZVESTIYA, Nov. 3, 2005, available at <https://iz.ru/445396/vladimir-perekrest/advokaty-pichugina-podali-v-sud-na-genprokuraturu>.

²⁶ RICHARD SAKWA, PUTIN AND THE OLIGARCH: THE KHODORKOVSKY-YUKOS AFFAIR 116 (2014).

investigators, who promised them leniency in exchange.²⁷ In the appeal to the Supreme Court, Vladimir Shapiro said that investigators offered him “manna from heaven” if he falsely named Pichugin and Nevzlin.²⁸

At Pichugin’s trial, the Court denied Pichugin’s counsel the right to cross-examine the co-defendants, which meant the defense could not uncover the details of the conspiracy to implicate Pichugin and Nevzlin during his trial. The Court also denied all of the defense requests to introduce its own exculpatory evidence to refute the prosecution’s allegations.

One especially egregious decision related to a handwritten note containing Evgeny Rybin’s address in Vienna, which was found on the cover of Gorin’s passport. The prosecution had ordered two expert reports to assert it was written in Pichugin’s handwriting, hoping to prove that he was part of an alleged plan to murder Rybin – despite the fact that Pichugin was never charged with planning to murder Rybin in Austria. But these expert reports were not conclusive. The first report found that it was not possible to reach any firm conclusions about the author of the note due to the lack of comparative writing material, while the second report appeared to conclude, after examining additional samples of Pichugin’s handwriting, that Pichugin wrote the note.

But Pichugin’s defense presented its own expert to the Court. The defense report was produced by N.V. Volodina, an expert who had previously worked as the head of the Russian government’s forensic handwriting analysis laboratory. Volodina testified that there were enough differences between Pichugin’s handwriting and the handwriting in the note to conclude that Pichugin did not write the note. She further noted that the experts who had formulated the second report never had samples of Pichugin’s handwriting in Latin script, even though part of the note in question was written in Latin script, thereby invalidating their conclusion.

Despite having allowed Volodina to testify, the Court then inexplicably set aside her testimony as invalid, refusing to consider it entirely. The Court claimed that her testimony only contained a value judgment of the prosecution’s experts’ findings and that Volodina did not have procedural status because she was not appointed as a forensic expert.

On August 17, 2006, Judge Usov convicted Pichugin and sentenced him to 21 years in prison. But on February 21, 2007, the Supreme Court reversed Pichugin’s conviction and ordered a new trial before a new judge. The Supreme Court specifically found that Pichugin’s conviction was unfounded and based on conjecture. Incongruously, the Supreme Court further stated that if Pichugin were found guilty on retrial, the trial court should consider imposing a harsher sentence.

4. Retrial

Pichugin’s retrial before Judge P. Ye Shtunder ran from April 17, 2007 to August 6, 2007. As in the first trial, the Court prevented the defense from accessing critical information, denying all but one of the defense’s motions requesting the discovery of information. Despite the inconsistencies in the testimonies of the four co-defendants – who were re-examined in the retrial as witnesses – and in the other documents presented as evidence, including the

²⁷ Vera Chelishcheva, *I Decided to Change the Situation*, NOVAYA GAZETA, Apr. 10, 2018, available at <https://www.novayagazeta.ru/articles/2018/04/11/76138-resnil-smenit-obstanovku>.

²⁸ Sergei Orlov, *The FSB Has Got Involved in the Alexei Pichugin Case: One of its Colonels Spent an Hour Interrogating the Former YUKOS Employee on July 13*, KHODORKOVSKY.COM, July 26, 2016, available at <https://www.khodorkovsky.com/the-pichugin-case/>.

handwritten note mentioned above, the Court denied the defense motions to discover information or submit additional expert evidence.

Critically, Pichugin was re-tried on the exact evidence that the Supreme Court had previously found conjectural and inadequate. He was convicted again. This time, the Moscow City Court sentenced Pichugin to life in prison, consistent with the instructions of the Supreme Court. His defense again appealed the verdict, but on January 31, 2008, the Supreme Court denied the appeal and affirmed the conviction, despite its prior decision invalidating Pichugin's conviction on the very same evidence.

II. LEGAL ANALYSIS

For the reasons set forth below, the detention of Alexey Pichugin constitutes an arbitrary deprivation of liberty under Category III as set forth by the U.N. Working Group on Arbitrary Detention (Working Group). The Russian Federation signed the International Covenant on Civil and Political Rights on March 18, 1968, and ratified the treaty on October 16, 1973. Additionally, the Working Group will look to the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.²⁹ Furthermore, under Article 15(4) of the Constitution of the Russian Federation:

The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.³⁰

The Working Group considers a deprivation of liberty to be an arbitrary detention under Category III “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”³¹ As the Russian Government has violated numerous procedural requirements under both international and domestic law in this case, the ongoing detention of Alexey Pichugin is arbitrary under Category III of the Working Group's Methods of Work.

A. The Russian Government Arrested Pichugin Without a Warrant

Article 9(2) of the ICCPR provides that “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.” Under the Body of Principles, an arrest “shall only be carried out strictly in accordance with the provisions of the law,” and shall be “duly recorded” with the reasons for the

²⁹ Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, G.A. Res. 47/173, U.N. Doc. A/43/49, adopted 1988 [hereinafter *Body of Principles*], available at <http://www.un.org/documents/ga/res/43/a43r173.htm>.

³⁰ CONSTITUTION OF THE RUSSIAN FEDERATION, Art. 15(4), Dec. 25, 1993, available at <http://www.constitution.ru/en/10003000-01.htm>.

³¹ FACT SHEET NO. 26: THE WORKING GROUP ON ARBITRARY DETENTION, UN OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, May 2000, pt. IV(B), available at <https://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

arrest, the time of the person's first appearance before a judicial authority, and information about the place of custody.³² Furthermore, Article 22(2) of the Russian Constitution states that "[a]rrest, detention, and keeping in custody shall be permissible only under a court order."

On the morning of June 19, 2003, Pichugin was confronted at his home by a Russian Colonel accompanied by three FSB staffers and 18 "Alpha unit" armed FSB agents. They searched his home for four hours and then led him away in handcuffs without providing any written authorization for the arrest. The WGAD has repeatedly stated that an arrest without a warrant is only permissible when the arrest is *in flagrante delicto* or carried out under emergency powers that satisfy all other procedural safeguards,³³ neither of which apply here. In Pichugin I, he was taken into custody without an arrest warrant in violation of Article 9(2) of the ICCPR and Principle 12 of the Body of Principles.

B. The Russian Government Held Pichugin in Extended Pre-Trial Detention for More Than a Year in Violation of His Right to the Presumption of Bail

The ICCPR contains a presumption against pretrial detention. Article 9(3) states that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement."

The Human Rights Committee has interpreted this provision to require an individualized determination of a person's status.³⁴ It specifically states:

Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law and should not include vague and expansive standards such as "public security."³⁵

The Working Group has repeatedly applied these general principles in reiterating that pretrial detention must be an individualized exception rather than a default mechanism.³⁶ Indeed, even under Russian Law, a judge is supposed to, in particular, take into account the "gravity of the crime, information on the suspect's or accused's personality, his/her age, condition of health, marital status, occupation and other circumstances," and may adjust the measures of restriction by determining if the defendant may flee from the court, may continue the criminal activity, or may threaten witnesses or other participants in the criminal proceeding.³⁷

³² *Body of Principles*, *supra* note 29, Principles 2, 12(1).

³³ *Reynaldo Bernardo v. Philippines*, Opinion No. 30/1993, E/CN.4/1994/27, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Apr. 30, 1993, at ¶ 11, 17(a).

³⁴ *General Comment 35 on Article 9: Liberty and Security of Person*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/GC/35, Dec. 16, 2014, at ¶ 38.

³⁵ *Id.*

³⁶ *See, e.g., Gloria Macapagal-Arroyo v. Philippines*, Opinion No. 24/2015, A/HRC/WGAD/2015/24, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Sept. 2, 2015, at ¶ 37; *Teymur Akhmedov v. Kazakhstan*, Opinion No. 62/2017, A/HRC/WGAD/2017/62, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Aug. 25, 2017, at ¶ 41 ("[P]retrial detention must be an exceptional measure and as such should be justified in each individual case and assessed by a competent, independent judge . . .").

³⁷ CRIMINAL PROCEDURE CODE OF THE RUSSIAN FEDERATION, arts. 97, 99.

Yet in Pichugin I, he was arrested on June 19, 2003. In his first hearing before a judge, on June 21, as later recounted by the European Court of Human Rights: “Counsel for [Pichugin] asked the prosecutor to submit to the court the materials showing the existence of a reasonable suspicion against the applicant. The prosecutor refused, referring to the confidentiality of the investigation.”³⁸

Between that initial hearing and June 11, 2004, when the case was committed to trial, Pichugin renewed his request for bail and appealed the denial of a request for bail nearly a dozen times. All these requests were summarily dismissed, and the judges relied exclusively on the severity of the alleged charges. There was no individualized determination as to his status. Adding to the very unusual way in which this case was handled, Pichugin was detained during this time in an FSB prison overseen by the Russian intelligence service, rather than in a prison run by the Ministry of Justice.

This led the European Court of Human Rights to find a violation of Pichugin’s right to release pending trial under Article 5(3) of the European Convention on Human Rights. The Court concluded, in relation to Pichugin’s pre-trial detention, that “by failing to address specific facts or consider alternative ‘preventative measures’ and by relying essentially on the gravity of the charges, the authorities extended the applicant’s detention on grounds which, although ‘relevant,’ cannot be regarded as ‘sufficient’ for the entire period of detention.”³⁹

Therefore, during Pichugin I, he was detained in pre-trial detention in violation of his right under Article 9(3) of the ICCPR to have an individualized determination about whether he could be released on bail, and if so, under what appropriate conditions.

C. Pichugin Was Tried and Convicted in Violation of His Right to a Public Hearing

Under Article 14(1) of the ICCPR, “[i]n the determination of any criminal charge against him . . . everyone shall be entitled to a . . . public hearing . . .” The Human Rights Committee has further emphasized that “the publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large.”⁴⁰ The Working Group has also repeatedly highlighted the importance of a public trial, offering observations when the right has been violated, because “it is the public character of the hearing that protects an accused against possible flaws in the administration of justice.”⁴¹

From the outset of Pichugin I, Russian authorities claimed his case involved “state secrets,” which justified having a closed trial. It was later learned that only 60 out of some 7,000 documents in the case were “secret,” but repeated requests by Pichugin’s counsel to hold a public trial by jury, where it could be closed for any hearing relating to these “secret” documents, were denied. Instead, despite the fact that the charges in Pichugin I involved only routine street crimes, the entire set of pre-trial hearings, the first trial, and the re-trial were **all** held in secret between July 2004 and July 2005.

³⁸ See *Pichugin v. Russia*, App. No. 38623/03, Eur. Court of Human Rights, Oct. 23, 2012, at ¶ 9, available at <https://hudoc.echr.coe.int/eng/#%7B%22itemid%22:%5B%22001-114074%22%5D%7D>.

³⁹ *Id.*, at ¶¶ 142-43.

⁴⁰ *General Comment No. 32 on Article 14: Right to Equality Before Courts and Tribunals and To A Fair Trial*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, at ¶ 28 [hereinafter *Human Rights Committee General Comment 32*].

⁴¹ *Akzam Turganov v. Uzbekistan*, Opinion No. 53/2011, A/HRC/WGAD/2011/53, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Nov. 17, 2011, at ¶ 45.

In its judgment on Pichugin I, the European Court of Human Rights reiterated that “[t]he administration of justice, including trials, derives legitimacy from being conducted in public.”⁴² It observed that there are exceptions to holding a hearing in private under the European Convention, including “morals, public order, or national security,” but it concluded that, in Pichugin’s case, “there is no evidence to suggest that these conditions were satisfied.”⁴³ In fact, it explained specifically that the Moscow City Court “did not elaborate on the reasons for holding the trial *in camera*. It did not indicate which documents in the case file were considered to contain State secrets or how they were related to the nature and character of the charges . . . nor did the Moscow City Court respond to the applicant’s request to hold the trial publicly subject to clearing the courtroom for a single or, if need be, a number of secret sessions”⁴⁴ The European Court thus found a violation of Article 6(1) of the European Convention.⁴⁵

Therefore, in Pichugin I, his right to a public hearing under Article 14(1) of the ICCPR was also violated.

D. Pichugin Was Repeatedly Denied Access to Counsel and His Counsel Was Repeatedly Denied Adequate Time and Facilities to Prepare His Defense

Under Article 14(3)(b) of the ICCPR, “everyone shall be entitled to the following minimum guarantees . . . to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.” The Human Rights Committee has further observed that what counts as “adequate time” depends on the circumstances of each case and that if counsel feels the preparation time is insufficient, they should request an adjournment.⁴⁶

On numerous occasions during Pichugin I, beginning on the very day he was detained, Pichugin was denied access to counsel. He was repeatedly interrogated during his pre-trial detention outside the presence of his lawyers and was pressed by FSB interrogators to give false testimony against Yukos executives Mikhail Khordokovsky and Leonid Nevzlin. In addition, his lawyers’ requests to the Russian authorities to have access to their client were repeatedly denied, including on but not limited to June 19, July 14, and July 21, 2003 and March 19, 2004.

Furthermore, the investigation into Pichugin was completed only on January 30, 2004, at which time his counsel was finally permitted access to the case file for Pichugin I. Pichugin and counsel were required to physically go to a small, poorly-lit room at the court to study the documents, which included many handwritten notes from interrogations. They were limited in how often and for how many hours they were given access to the materials and, on at least one occasion, were prohibited from photocopying documents, even at their own expense, further slowing their time to review the materials. On May 24, 2004, at the request of the prosecution, the court ordered the defense to complete its review by June 4, 2004, against its strong objections. The trial began one week later on June 11, 2004.

⁴² See *Pichugin v. Russia*, App. No. 38623/03, Eur. Court of Human Rights, Oct. 23, 2012, at ¶ 185, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-114074%22%5D%7D>.

⁴³ *Id.*, at ¶¶ 186, 188.

⁴⁴ *Id.* at ¶ 188.

⁴⁵ *Id.* at ¶ 192.

⁴⁶ *Human Rights Committee, General Comment 32, supra* note 40, at ¶ 32.

During Pichugin II, the Moscow City Court repeatedly denied his counsel access to the criminal case file, which included the police files on the murder and attempted murder victims, which he was charged with having killed or tried to kill, respectively.

Pichugin's right to access counsel in Pichugin I was also violated repeatedly. By arbitrarily and unnecessarily limiting his counsel's access to the documents in the case, Russian authorities interfered with his right to have adequate time and facilities to prepare his defense.

Collectively, Pichugin's right to have access to counsel and his right to have his counsel have adequate time and facilities to prepare his defense under Article 14(3)(b) of the ICCPR were violated in both Pichugin I and Pichugin II.

E. The Courts Interfered with Pichugin's Rights to Cross-Examine and Present Key Witnesses

There was literally no physical or direct evidence at trial linking Pichugin to any of the incidents for which he was charged, and none was presented at trial, either in Pichugin I or Pichugin II.

In Pichugin I, the only alleged first-hand testimony against Pichugin came from Igor Korovnikov, a serial rapist and murderer already serving a life sentence in a maximum-security prison. Korovnikov claimed that he had witnessed Gorin speak to Pichugin about instructions concerning one of the other victims in the case. Korovnikov did not claim to actually hear this discussion. Moreover, while Korovnikov claimed to have met Pichugin in 1999, he could not pick him out of a lineup. Korovnikov also changed his testimony on various occasions while being interrogated, saying at one point, in a reference to Vladimir Putin, that his future was now "in the hands of the President of Russia."

Under Article 14(3)(e) of the ICCPR, a criminal defendant is entitled to "examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him." Furthermore, Article 56(6) of the Russian Criminal Procedure Code says, in relation to witnesses at criminal proceedings, "The witness shall have no right: . . . (2) to give deliberately false evidence or to refuse to give evidence"

When Pichugin's counsel sought to cross-examine Korovnikov on the stand, he refused to answer a number of critical questions. When defense counsel reminded him that witnesses could be prosecuted for refusing to testify, Judge Olixver contradicted defense counsel, stating that a witness could refuse to answer questions. Moreover, when defense counsel tried to cross-examine Korovnikov about his criminal background and what he might be getting in exchange for his testimony from prosecutors (for example, a reduction in his life sentence), the judge cut defense counsel off, saying that questions about Korovnikov's character and motivation were not "relevant."

In examining this issue in Pichugin I, the European Court of Human Rights found:

Mr. K.'s testimony was the only first-hand testimony, given under oath, of the applicant's involvement in the imputed murders. It was obviously evidence of great weight and without it the chances of a conviction would have significantly receded. For that reason it may be considered the decisive evidence against the applicant.⁴⁷

⁴⁷ *Pichugin v. Russia*, App. No. 38623/03, Eur. Court of Human Rights, Oct. 23, 2012, at ¶ 200, available at <https://hudoc.echr.coe.int/eng/#%7B%22itemid%22:%5B%22001-114074%22%5D%7D>.

It further observed:

In the present case . . . no reasons were advanced by Mr. K. for his refusal to answer the questions. In particular, he did not invoke his privilege against self-incrimination [W]hen [the judge was] asked by counsel for the applicant to remind Mr. K. of his statutory duty to answer questions and his possible criminal liability for refusing to do so, the presiding judge replied that Mr. K. was entitled not to answer The Court cannot but find that as a result of the gratuitous permission given by the presiding judge to Mr. K. not to answer certain questions of the defence . . . the applicant's right to challenge and question that witness . . . was significantly restricted . . . [and that was] further aggravated by the fact that he was not permitted to question Mr. K. about certain factors that might have undermined his credibility It follows that there has been a violation of Article 6 §§ 1 [right to fair trial] and (3)(d) [right to cross-examine witnesses].⁴⁸

These violations occurred in both the first trial and, after the jury was dismissed in December 2004, in Pichugin's second trial, which began in January 2005. Again, Korovnikov testified and Judge Olixver refused to order him to answer questions from the defense, and the defense was denied the right to question his character and motivation for testifying.

In Pichugin II, the Moscow City Court totally denied defense counsel the right to cross-examine Pichugin's four co-defendants. The importance of this denial was revealed when all four co-defendants later recanted their testimony implicating Pichugin in the murders and attempted murders, stating that investigators had told them to name Pichugin and Nevzlin, whom the co-defendants later said they did not know about at all.

Furthermore, although the Court initially allowed the defense's handwriting expert N.V. Volodina to testify that Pichugin did not write the note purportedly implicating him in the attempted murder of Evgeny Rybin, the Court then inexplicably set aside her testimony and refused to consider its substance. The guarantees provided under Article 14(3)(e) of the ICCPR are derived from the principle of the "equality of arms," which makes it essential that the parties in trial have parity of powers with respect to calling and examining witnesses. While courts may have their own rules for admissibility of evidence, the Working Group has found that a court cannot unfairly apply evidentiary rules to exclude the accused from cross-examining witnesses or presenting testimonies material to the charge.⁴⁹

When Pichugin II was examined by the European Court of Human Rights, the European Court explained that "the domestic courts' refusals to admit reports prepared by 'specialists' as evidence breached an equality of arms principle."⁵⁰ It then noted that "expert reports submitted by the prosecution in order to prove a particular point before the court were obtained without any participation of the defence. The defence was unable to formulate questions to the experts, challenge the experts or propose their own experts for inclusion in the team."⁵¹ It reiterated that

⁴⁸ *Id.*, at ¶¶ 203-206, 213.

⁴⁹ *Muhannad Al-Hassani v. Syrian Arab Republic*, Opinion No. 26/2011, A/HRC/WGAD/2011/26, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Aug. 30, 2011, at ¶¶ 10, 30 (finding a violation of ICCPR art. 14(3)(e) where trial judge refused to allow accused's witnesses to testify and did not take into account any evidence submitted by the defense).

⁵⁰ *Pichugin v. Russia*, App. No. 38958/07, Eur. Court of Human Rights, June 6, 2017, at ¶ 33, *available at* <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-174061%22%7D>.

⁵¹ *Id.*, at ¶ 34.

“[t]o realise [this] right effectively the defence must have the same opportunity to introduce their own ‘expert evidence.’”⁵² As a result, the Court found violations of Articles 6(1) and 6(3)(d) of the European Convention on Human Rights.⁵³

Therefore, the courts in Pichugin I and II interfered with his rights under Article 14(3)(e) of the ICCPR to present and cross-examine witnesses.

F. Russian Officials Violated Pichugin’s Right to the Presumption of Innocence

Under Article 14(2) of the ICCPR, “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.” The right to the presumption of innocence imposes on the prosecution the burden to prove the charge, and to ensure that the accused in trial has the benefit of doubt.⁵⁴ According to the Human Rights Committee, media coverage that affirms the accused’s guilt, or portrays the accused in a way that undermines the presumption of innocence, must be avoided.⁵⁵ The Working Group has also reaffirmed this interpretation of the presumption of innocence, finding a violation in *Francisco José Cortés Aguilar, et al. v. Bolivia*, where the government used the detainee’s arrest to further official propaganda.⁵⁶

As noted earlier, in Pichugin II, on July 5, 2005, Deputy Prosecutor General V. Kolesnikov appeared on multiple televised Russian news channels declaring that Pichugin, instructed by Nevzlin, murdered Mayor Vladimir Petuxov. Similarly, on September 11, 2005, Investigator Burtovoi claimed in a television interview that Pichugin conducted the attempted murders and murders, which were organized and paid for by Nevzlin.

When Pichugin II was examined by the European Court of Human Rights, it began its analysis on this issue by observing that these two interviews had been conducted by Russian government officials. It explained: “The Court takes note of the Government’s assertion that the purpose of the impugned statements was to inform the public about the developments in the applicant’s case. However, the Court considers that the statements, assessed as a whole, were not made with necessary discretion and circumspection.”⁵⁷

It then concluded:

The Court considers that those statements by the public officials amounted to a declaration of the applicant’s guilt and prejudged the assessment of the facts by the competent judicial authority [T]he Court finds that they could not but have encouraged the public to believe the applicant guilty before he had been proved guilty according to law. Accordingly, the Court finds that there was a breach of the . . . presumption of innocence [under Article 6(2) of the Convention].⁵⁸

⁵² *Id.*, at ¶ 35.

⁵³ *Id.*, at ¶ 38.

⁵⁴ *Human Rights Committee General Comment 32*, *supra* note 40, at ¶ 30.

⁵⁵ *Id.*

⁵⁶ *Francisco José Cortés Aguilar v. Bolivia*, Opinion No. 12/2005, E/CN.4/2006/7/Add.1, U.N. Working Group on Arbitrary Detention, *adopted* May 26, 2005, at ¶¶ 9-10.

⁵⁷ *Pichugin v. Russia*, App. No. 38958/07, Eur. Court of Human Rights, June 6, 2017, at ¶ 41, *available at* <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-174061%22%5D%7D>.

⁵⁸ *Id.*

Therefore, in Pichugin II, Russian government officials violated his right to the presumption of innocence protected by Article 14(2) of the ICCPR.

INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN

Pichugin remains in detention today and has been transferred to various detention centers across Russia. His final appeals before the Supreme Court of the Russian Federation have all been exhausted. He has repeatedly applied for a pardon from the Putin Administration. These have been summarily rejected. Most recently, on March 27, 2017, it was made public that Pichugin had been disappeared from Lefortovo Prison and that his family and lawyers did not know where he had been taken.⁵⁹ He later resurfaced in the Black Dolphin Prison, one of the most notorious and difficult prisons in Russia, where he remains today.

⁵⁹ Vera Vasilyeva, translated by Frances Robson, *Political Prisoner Aleksei Pichugin Sent Back to “Black Dolphin” Prison Colony*, RIGHTS IN RUSSIA, Apr. 4, 2017, available at <http://www.rightsinrussia.info/hro-org-in-english/pichugin-5>.