



Chodorkovsky's misapprehensions

The former Russian entrepreneur Michail Chodorkovsky is jailed in Siberia. Currently, a further trial against him is under way. Is the ex-oligarch a victim of the corrupt Russian judiciary? That is the way he portrays himself. The western media just seem to transcribe his views. The case is, however, more complicated.

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A short time ago, the former oil billionaire Mr. Chodorkovsky gave a long interview in the German weekly Der Spiegel from his prison cell in Siberia. He criticized the Russian Prime Minister Mr. Wladimir Putin and described himself as a victim of a political vendetta. He creates an image of a trustworthy businessman and a straight dissident, who is antagonized by governmental mafia methods.

Before we take a look at the details in order to critically verify this self-perception: The rise and fall of Michail Chodorkovsky took place during tumultuous times of Russian history. During the eighties and nineties the former giant empire stood at the edge of political and economical abyss. Most of the people in the west were not aware of the extent of the crisis. During these times, new freedom broke out which was used and abused by many – also by Mr. Chodorkovsky.

A gifted pupil

Biographically, like all oligarchs of the first generation, Mr. Chodorkovsky has his roots in the Soviet Union. He was born in 1963 and grew up in a Jewish environment, living in a two-room apartment in Moscow. Both parents were chemists; he was considered an intelligent pupil who studied at the Mendeleev Moscow Institute of Chemistry and Technology, where he graduated in chemical engineering at the age of 23. As many students, he was a member of the Komsomol (the communist youth league).

Mr. Chodorkovsky was, however, not only a mere member of the Komsomol but he climbed its career ladder and became the deputy head of Komsomol at the Mendelew Institute. Through these activities he was able to build and extend his network to the powers within the soviet apparatus. Under this protective shield he opened his first business – a coffee shop. From 1987 on he was managing the NTTM, a Komsomol enterprise that could be established thanks to the political change during the times of Perestroika initiated by the former Head of the Soviet Union, Mr. Gorbachev. NTTM was trading in computers and alcohol. Chodorkovsky was just one step away from great success.

According to official sources the turnover of his enterprise was USD 10 million in 1988. In 1989, using good connections and his existing working capital, Chodorkovsky was able to establish the Menatep Bank. Still using the protection of the political organization of the Komsomol, he obtained the necessary banking license. The funds of the bank were used to finance import and export trading activities. Through his good political contacts Bank Menatep received the right to manage funds awarded to the Chernobyl victims. At that time, there were rumors that Bank Menatep was illegally channeling funds for the powerful out of Russia; it is said that billions disappeared in a black hole. The success of Bank Menatep brought Chodorkovsky closer and closer to the circles of power. Already in 1992 he was part of the advisory board of the Russian President, Mr. Jelzin. One year later

he became the deputy minister for fuel and energy. Until 1994 he also was a member of the council for industrial policies and together with other oligarchs he was one of the big financial supporters of the re-election of Mr. Jelzin.

Billion-Dollar Empire

At this stage, Mr. Chodorkovsky secured what would be his billion-dollar empire. The ambitious oligarch took part in a famous cabinet meeting in 1995. During this meeting the privatization of oil companies and its procedures were discussed. In the course of the privatization, Mr. Chodorkovsky was able to acquire a majority stake in the ailing state oil company Yukos in several steps through Menatep Bank and Rosprom for a price far below real value. Already in 1999 Chodorkovsky became an influential political figure who supported the liberal party Jabloko. Businesswise, he got his bearings towards the United States – there

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were talks with the Exxon Mobile and Chevron Texas.

The pact with Putin

The turn of the millennium was also a turning point for Chodorkovsky. After the Yeltsin era, which was seen as corrupt, boozed and incompetent, a new man, the former KGB agent Vladimir Putin was elected President of Russia. The new front man in the Kremlin called the most powerful oligarchs to a meeting, which took place shortly after the presidential election. Mr. Putin analogously told the powerful men: «You do not involve yourselves in politics and I will not check out how you have snatched up your huge holdings». The participants of this meeting should have been aware that they would find themselves in serious trouble would the Kremlin go forward and proceed with such a due diligence.

Two of the oligarchs who opposed Mr. Putin – Mr. Beresovsky and Mr. Gusinsky – left Russia shortly thereafter. Mr. Chodorkovsky, however, at that time the richest man in Russia, was not afraid. He did not refrain at all from his political ambitions and financed members of the parliament and did not stop publicly criticizing the politics of Mr. Putin and the Kremlin. This was not without consequences. In

October 2003 Mr. Chodorkovsky was arrested. The range of accusations comprised privatisation fraud, export fraud and tax fraud. Mr. Chodorkovsky is jailed since 2003 and an additional trial is currently under way.

How shall the role of Mr. Chodorkovsky be assessed based on the facts at hand? Is he a victim or an offender? A reckless criminal or a martyr?

80 percent below market value

Due to his background, Mr. Chodorkovsky had no business or political contacts at his disposal. This is the reason that he chose the Komsomol as his first career step. Basically all students had to join this compulsory organization. Mr. Chodorkovsky, however, used this organization very smartly in order to achieve his goals. For him the Komsomol was an instrument to outwit the system. From the beginning he chose the political avenue to obtain benefits for his business. Roman Abramovic, the Russian billionaire who is currently residing in England, took a total different approach. The story about him goes that he traded in stolen gas in order to form a fundament for his riches – here, too, weaknesses of the fragile Russian system were abused.

Mr. Chodorkovsky was part of the most inner circle of power during the preparation of the privatizations. The political leadership at that time was, however, not up to the task. The businessmen who were called to help with the privatization abused these weaknesses ruthlessly. The issue that the political establishment also got its share of the cake is not within the scope of this article. Step by step Mr. Chodorkovsky got control over Yukos. This raid cannot be described as entrepreneurship as we would call it. Imagine the following: The Swiss government decides to privatize the national highway system. One of the richest citizens of Switzerland would be a member of the privatization board. The privatization itself would be mandated to a bank controlled by this rich man. The national highway system would then be awarded to the mother company of this very bank for a price which was 80% below real value. Loosing competitors screaming betrayal would be muzzled. That was exactly what Chodorkovsky did. As other oligarchs he was sailing close to the wind.

Chodorkovsky breaks the deal

How is the role of Mr. Putin to be judged and specifically the fact that he only destroyed Mr. Chodorkovsky leaving the other oligarchs alone?

Putin's deal – yes to economical power, no to political power – was pragmatic and at its time most probably the best way to curtail the political power of the oligarchs without jeopardizing the whole economic system. If Putin had not taken this precaution, it may have very well been that the entanglement of political power and money could have sent Russia to ruins. Said agreement with the oligarchs at that time very likely was the most practical manner to separate money and political power without

putting the huge empire in danger of total failure: The accord was a political agreement for Putin and served as a moral basis to go after Chodorkovsky after its breach. The legal claims brought forward against Chodorkovsky were not based on this political agreement since this accord was not written law. At any rate, for the Kremlin it was a valid agreement notwithstanding the fact that in the trial tax fraud and other offenses were raised.

From this aspect, the trial against Chodorkovsky was legally in order – the agreement was breached by Chodorkovsky and as a consequence thereof, he gambled away the right to keep Yukos. Indeed, the Russian system functions differently from what we are used in the west yet it has its rules by all means. The argument that Chodorkovsky was not aware of the risk he took is as credible as a lion pretending not to have known the risk of attacking a rhino. The basis to disempower Chodorkovsky was an agreement among powerful men – a kind of gentlemen's agreement which was breached by the power craving oligarch. One of today's arguments of Chodorkovsky that it was absurd to think and mere propaganda that he could be a competitor of Putin because of his Jewish background is without merits. His strategy was to become a political power – to achieve this one does not need to be president.

Also in jail in the west

Now we shall look at the legalities of Chodorkovsky's conviction in the narrower sense. Were the legal claims brought forward by the Russian government justified or fabricated? Was he unjustifiably harassed with criminal, custom and tax accusations? This is not the case. The acquisition of Yukos was doubtful. Most notably, however, Chodorkovsky used transfer-pricing within his empire.



No to political power: Prime Minister Putin.

His methods were critically described in detail in the conservative Stanford Law Review: Chodorkovsky drained the daughter companies through transfer pricing in such a manner that the daughter companies sold goods to the parent levels without

making any profits. Through this, he achieved that the Russian companies did not make (any) profit. The profits accumulated in the tax free off-shore structures of the holding. Many of these drained

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companies had minority shareholders, which were cheated by this system of profit transfer out of their dividends. As a consequence, custom and export regulations were breached. Only based on the transfer pricing tricks Chodorkovsky would have been convicted and jailed in most of the western countries.

Money and power

Chodorkovsky's belief to be untouchable as the richest man in Russia turned out to be a fatal mistake. To portray him as a victim and a clean businessman and entrepreneur who ended up in the corrupt wheels of the judiciary is erroneous. The goals of Chodorkovsky were money and power. The way he followed his plan made him vulnerable. Initially, Putin intended to let him keep the money but not the power. How will the Chodorkovsky matter play in the future? Russia is ticking differently again. If Putin's popularity is high, then Chodorkovsky is a criminal. If he is less favored by his people then Chodorkovsky could become a martyr. The Russians are not yet of the opinion that Chodorkovsky is a victim languishing in his cell in Siberia. The author who talks with many Russians has not yet found one who believes so.

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