

**THE SUPREME ADMINISTRATIVE COURT OF LITHUANIA**

**JUDGEMENT  
IN THE NAME OF THE REPUBLIC OF LITHUANIA**

**16 October 2006  
Vilnius**

The College of Judges of the Supreme Administrative Court, composed of the judges Arturas Drigotas, Sigita Rudenaite (Rapporteur) and Edvardas Sinkevičius (Chairman of the College), in presence of the following:  
secretary Kristina Bieliniene  
representative of the Applicant Meilute Mejeriene  
representatives of the Defendant Viktoras Ostrovnojus, Jolanta Verbuviene  
the third interested party Igor Babenko  
representative of the third interested party, lawyer Vitoldas Petravičius,  
translator Alina Dokutoviciene  
during the public court session of appellate jurisdiction examined the administrative case instituted on the basis of the appeal of the third interested party Igor Babenko in order to review the judgement of Vilnius Regional Administrative Court of 22 May 2006 in the administrative case instituted on the basis of the appeal of Applicant, the Prosecutor General's Office of the Republic of Lithuania, to the Defendant, Migration Department under the Ministry of the Interior of the Republic of Lithuania in order to overturn the decision.

The College of the Judges

established the following:

I.

the Prosecutor General's Office of the Republic of Lithuania applied to Vilnius Regional Administrative Court claiming to overturn the decision of the Migration Department under the Ministry of the Interior of the Republic of Lithuania No. 15/6-5-12PR-12 of 30 January 2006 which granted to the citizen of the Russian Federation, Igor Babenko, the refugee status and on the basis of which the permanent residence permit in the Republic of Lithuania has been issued to him. The Applicant stated that pursuant to the provisions of Article 86 paragraph 1 of the Law on the Legal Status of Aliens (hereinafter referred to as the Law) the Refugee status shall be granted to the asylum applicant who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, unless there are conditions specified in Article 88 of this Article. The Article 88 paragraph 3 of the Law prescribes that the Refugee status and subsidiary protection shall be refused to asylum applicant who is in compliance with the criteria of the Article 86 or 87, if there are serious grounds to believe that the alien has committed a serious non-political crime prior to his arrival in the Republic of Lithuania or has been accused of commission of acts contrary to the purpose and principles of the United Nations Organization.

/signature/

The Applicant noted that I. Babenko has been accused prior to his arrival in the Republic of Lithuania of commission of major criminal offences (the punishment for them in Lithuania would be imprisonment for a term of up to 10 years), therefore the decision shall be overturned. It is stated in the application that the Prosecutor General's Office of the Republic of Lithuania has received the request of the Prosecutor General's Office of the Russian Federation of 11 July 2005 and the documents for its substantiation issued for prosecution of the citizen of the Russian Federation, I. Babenko, for the crimes committed in the period from 2002 to 2004 specified in the Article 160 paragraph 4 and the Article 174<sup>1</sup> paragraph 4 (appropriation of property and dissipation as well as legalization (washing) of money and other property acquired by a person after commission of a crime under aggravating circumstances) of the Criminal Code of the Russian Federation. After consideration of the provided material, grounds which would allow to refuse to extradite I. Babenko to the Russian Federation have not been found, therefore, Vilnius Regional Court was addressed regarding the extradition. The Applicant explained that during the establishment of term of custody, on 1<sup>st</sup> of July 2005, in Vilnius City District Court No. 1, I. Babenko denied the commission of crimes alleged to him and declared that he arrived in Lithuania to deal with the matters of inheritance and to find a caregiver to his disabled aunt. In the complaint of 15 July 2005 regarding the order of this court, he stated that he was not aware of the prosecution brought against him and only on the 1<sup>st</sup> of August 2005, during the court session of Vilnius Regional Court he set the version about the imminence to his life in Russia as a result of heading the branch office of the bank which belongs M. Chodorkovski's people round about. To check these circumstances, the transcripts of interrogation of M. Chodorkovski, L. Skorochodov, V. Isakov, A. Babenko, L. Babenko and memorandum of the interrogator A. Shcherbin which confirm that M. Chodorkovski is not acquainted with I. Babenko and is not aware of the political character of his case, and I. Babenko knew about the prosecution brought against him and absconded from the law enforcement authorities. The Pleader of I. Babenko has submitted to the court many documents which quasi justify the innocence of the Defended and states that they have not been included in the criminal case under investigation in the Russian Federation (the Loan Agreement of 17 December 2004 under which the public limited liability company "MENATEP Sankt-Peterburg" undertook to grant a credit equal to 118,950,000 Roubles to I. Babenko, records of 5 September 2005 and 6 September 2005 from the Single State Register of Legal Persons of the Russian Federation), however, the agreement was concluded at the time when the bank, according to I. Babenko, was insolvent, and the provided records are not related to the criminal case. The Applicant paid attention to the fact that asylum application has been submitted only after Vilnius Regional Court made the order to extradite I. Babenko to the Russian Federation, i.e. after almost 3 months after his arrest in the Republic of Lithuania. According to the Applicant, the Defendant during the examination of the matter of asylum did not apply due to the receipt of the material related to the filed charges neither to her, nor to the Lithuanian Court of Appeals. The Prosecutor General's Office of the Republic of Lithuania believes that by adopting the decision which is appealed, the requirements of the Articles 86 and 88 of the Law on the Legal Status of Aliens as well as paragraphs 67, 76.1 of the Description of Procedure Governing the Examination of Applications for Asylum and the Adoption and Implementation of Relevant Decisions of Aliens approved by the Order of the Minister of the Interior N. 1V-361 of 15 November 2004, and this complicates the performance of international obligations of Lithuania and derogates the authority of Lithuania as the constitutional state. The representative of the Applicant during the session of court additionally explained that, first of all, I. Babenko claimed that he was persecuted due to his political opinion; later, his application was grounded on the membership of "Chodorkovski group". According to the representative of the Applicant, I. Babenko has the possibility to prove his innocence in the Russian Federation; the list of the persecuted persons related to "Jukos" case provided on the website shall not be the evidence; I. Babenko arrived in the Republic of Lithuania at ease, therefore, there is no reason to claim that he is persecuted. The provided Loan Agreement was not referred to in the accusation; therefore, in the opinion of the representative of the Applicant, accusation of misappropriation is not related to the abovementioned agreement. »The representative of the Applicant stated that the prosecutions brought against M. Chodorkovski and I. Babenko are not related and this was confirmed by M. Chodorkovski (his interrogation took place in the presence of his Defendant, therefore, the conclusion may be drawn that he was not under pressure during that interrogation).

/signature/

The Defendant did not agree with the complaint by stating that the "provisions of non-application" prescribed by the Article 88 of the Law on the Legal Status of Aliens shall be applied only to the persons which are actually proved to be refugees. The Applicant by claiming that the Department applied the Article 88 paragraph 3 of the Law incorrectly admits that I. Babenko is in compliance with the criteria of the Article 86 of the Law, i.e. the description of a refugee, since the provisions of non-application may be applied only in such way. The reason for statement in the complaint that the Department applied the provisions of the Article 86 of the Law incorrectly is unclear to the Defendant. The Defendant stated that pursuant to the Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter referred to as the Convention) no one shall be subjected to torture or to inhuman or degrading treatment or punishment. Pursuant to the principle of non-return implied in this Article, the State party to the Convention shall not only protect the persons against inadmissible treatment specified in the Article 3 of the Convention, not only in its territory but also not to deport such persons back to the states where they may become the subject to such treatment. After recognition that I. Babenko is in compliance with the description of a refugee, he shall be protected against deportation pursuant to the Article 3 of the Convention. The Defendant stated that the Department considered the matter of application of the Article 88 of the Law in the conclusion which is the basis for the decision which is appealed and made the conclusion that I. Babenko shall not be subject to this article. As concerns the material referred to in the complaint of the Applicant (the transcripts of interrogation of M.Chodorkovski, L.Skorochoodov, V.Isakov, A.Babenko, L.Babenko and memorandum of the interrogator A.Shcherbin) which quasi denies the links between the case of M.Chodorkovski and the case of I.Babenko, the Defendant stated that on the subject of the cases of political persecution, the authorities of the country of origin would be hardly determined to confirm the political character of its persecution in writing and officially, therefore, the statements of the Prosecutor General's Office of the Russian Federation as one of the subjects of potential persecution shall be assessed deliberately, and the provided response which denies the links between the case of I.Babenko and so called "Jukos" case is obviously unreliable. In addition, these links have been established in the judgement of Moscow Meshchanskij District Court of 16 May 2005 in respect of M.Chodorkovski and P.Lebedev and proved by the court by claiming in the judgement that P.Lebedev was the Chairman of the Board of Directors of public limited liability company "MENATEP Sankt-Peterburg" bank (I.Babenko is the head of one branch office; the essence of alleged acts against M.Chodorkovski and P.Lebedev is the establishment of false legal persons such as "MENATEP Sankt-Peterburg" and transfer of the money to certain banks of the Russian Federation through them, etc.). The Defendant stated that it is unclear why in one case the explanations of M.Chodorkovski that he did not establish the legal persons in order to pursue the illegal purposes was of no moment and did not preclude from pronouncement of conviction, and in other case the institutions of the Republic of Lithuania are offered to believe in almost identical claim of this person. According to the Defendant, I. Babenko is linked with "Jukos" case through "MENATEP Sankt-Peterburg" bank managed by him (at least the authorities of Russia believe in that). The attention shall be paid to the fact that the proceedings were initiated against I.Babenko only after passage of the abovementioned conviction, although the alleged acts against him had been made in the period from 2002 and 2004, and this testified that the grounds to persecute I.Babenko appeared only after passage of this conviction. The Defendant emphasized that it is not important whether the reason due to which a person is persecuted or feels a well-founded fear of being persecuted is actual, or only envisaged by the persecutors (the authorities may envisage that a persons belongs to a certain social group and, therefore, persecute him). Since the evidence filed by the Prosecutor General's Office of the Russian Federation as regards links between I.Babenko and "Jukos" cases is questionable; according to the Defendant, evidence of persons interrogated as witnesses on whether I.Babenko knew about the prosecution brought against him. In opinion of the Defendant, neither this evidence, nor the fact when I.Babenko applied for asylum in the Republic of Lithuania, itself had the essential influence on the adoption of the decision to grant it. Neither Convention, nor the Law on the Legal Status of Aliens prescribe any terms for the submission of asylum application. In addition, I.Babenko expected that the issue of his political persecution will be solved in the framework of extradition case. The collected material confirms that I.Babenko was arrived in Lithuania in February and May of 2005. This fact shows that he has not absconded from Russian law enforcement institutions.

/signature/

The Applicant has not filed the evidence that conclusion of the Loan Agreement between the bank and I.Babenko is not available pursuant to the legal acts of the Russian Federation and the Prosecutor General's Office of the Russian Federation has not filed the abovementioned agreement together with other documents of extradition at all. According to the Defendant, this implies that funds have been collected from the bank in legal manner, and the character of persecution is political. The Department explained that it did not address either to the Prosecutor General's Office of the Republic of Lithuania, or to Lithuanian Court of Appeals with the request to familiarize with the extradition case since pursuant to the Article 237 of the Code of Criminal Procedure of the Republic of Lithuania, it is not allowed to familiarize with the material, since it is not the participant of the criminal procedure. The Defendant did not agree with statement of the Applicant that the decision to grant the refugee status to I.Babenko complicates the performance of international obligations of Lithuania and derogates the authority of Lithuania, since the decision which is appealed has been adopted by performing the international obligations undertaken by Lithuania under 1951 Geneva Convention relating to the Status of Refugees, Agreement Between the Republic of Lithuania and the Russian Federation on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases. The representatives of the Defendant during the court session explained that there is no mistake in the Law on the Legal Status of Aliens: the provisions of non-application shall be applied to those persons who are in compliance with the definition of a refugee. The analogous provisions are established in the Article 1 of 1951 Geneva Convention relating to the Status of Refugees. According to the representatives of the Defendant, I.Babenko is persecuted for his belonging to the social group, i.e. people round about, related with "Jukos" case which is clearly identified. The Department stated that it has no right to address the Russian Federation directly concerning the receipt of information, since this may cause threat of summary execution with the Applicant and people close to him. The representatives of the Defendant noted that the Committee of Ministers of the Council of Europe has expressed its opinion about the provisions of non-application that the clear and reliable information for application of such provisions shall be received, and in case of lack of such information, there is no reason to consider that a person committed the crime other than the political crime. The representatives of the Defendant claimed that both the Russian Federation and the Prosecutor's Office of the Republic of Lithuania ignored the fact of the Loan Agreement, although it has not expired thus far. The validity of the decision to grant the refugee status is not suspended, therefore, the refugee status may be overturned only on the grounds of the Article 90 of the Law which do not exist in this case. The representatives of the Defendant noted that the status of I.Babenko is exclusive: he was in the high position, worked as the bank manager who had discretionary powers; he was able to sign all the documents. The links with "Jukos" case are very clear: the date of bringing prosecution against I.Babenko shows that after the central institutions and Siberia, it was Stavropolis turn. According to the representatives of the Defendant, earlier the purpose of prosecution against I.Babenko was to intimidate; his case is one of the first ones in terms of such persecution; the fact of bringing prosecution against him per se shall be considered as persecution, and the Prosecutor General's Office of the Russian Federation and Federal Security Service of the Russian Federation (FSB) may be considered as the persecutors, although the Department never claimed that this is political persecution.

While commenting the complaint, the third interested party I.Babenko asked to deny it by referring to the fact that the charges in the request of Prosecutor General's Office of the Russian Federation of 30 June 2005 have been fabricated and false, and the decision to extradite him is illegal. I. Babenko addressed that the branch office of "MENATEP Spb" in Stavropolis was established in his direct presence in 1998 to service the subsidiary companies of the oil concern (hereinafter referred to as the OC) "JUKOS". Pursuant to the development strategy of OC "JUKOS", the largest controlling interest in Stavropolis region was acquired by the sales company AB "Stavropolnefteprodukt" after establishment of the OC "JUKOS" branch office of the corporate bank in 2000. The settlements of OC "JUKOS" with AB "Stavropolnefteprodukt" shareholders were made in the proximate presence of the branch office of the bank and himself. Thus, the large-scale complex of enterprises associated by corporate relations was developed in Stavropolis region; together with the branch office of the corporate bank the complex engaged in sales of oil products of OC "JUKOS". I.Babenko claimed that since 2002 he has perceived the continuous attention of the Regional Board of the Federal Security Service of the Russian Federation (hereinafter referred to as FSS) paid to him and the branch office. The attention was also paid to other subsidiary companies of the OC "JUKOS" and other customers.

/signature/

In January of 2005, two officers of FSS talked to him and offered to provide the information on subsidiary companies of the OC "JUKOS" and other customers related to the OC "JUKOS"; they warned that otherwise his prosecution will be encumbered. According to I.Babenko, FSS contributed to the fabrication of the alleged charges against him. The third interested party stated that he does not understand why the Prosecutor General's Office of the Republic of Lithuania has been satisfied with the response of the Prosecutor General's Office of the Russian Federation submitted as the transcript of interrogation of M.Chodorkovski, since the questions put to M.Chodorkovski distorted the essence of the inquiry of the Prosecutor General's Office of the Republic of Lithuania. I.Babenko claimed that he has not issued the statements that he is closely acquainted with M.Chodorkovski and belongs to the circle of his people round about, however, in his opinion, the indicated facts concerning the management of the branch office of the bank shall be serious and reliable argument which proves the link between the branch office and the OC "JUKOS" and "MENATEP"; therefore, the arguments of the complaint that the submitted material about AB "Stavropolnefteprodukt" and UAB "Stavropolterminal" is not related with his case shall be disposed. According to I.Babenko, M.Chodorkovski implied that he is acquainted with him and was interested in his official business as well as knocked around with him. He is in the list of the persecuted persons related to OC "JUKOS" case published on the official website of M.Chodorkovski. The Loan Agreement is valid and concluded with the privity of O.Koliada, the Chairman of the Board of the bank; the credit has been recorded in the credit documents and balance sheets of the branch office and the bank. There are no documents about the lack of finances in the material submitted by the Russian Federation. According to I.Babenko, the fact of credit receipt was used by FSS and the power structures of Southern Federal District of Prosecutor General's Office of the Russian Federation to present it as the crime in accordance with the Article 160 paragraph 4 and the Article 174<sup>1</sup> paragraph 4 of the Criminal Code of the Russian Federation. According to submission of I.Babenko, the deficit equal to 118.95 million Roubles appeared as the result of collection of money into the state budget through bailiffs in accordance with the cases of M.Chodorkovski and P.Lebedev from the accounts of the OC "JUKOS" in the branch offices of the bank. According to I.Babenko, the refugee status and the permanent residence permit in Lithuania are necessary for him in order to avoid the imminence in the Russian Federation as a result of illegal prosecution related to the case of M.Chodorkovski and the OC "JUKOS". The third interested party claimed that it is going to crucify him physically in the Russian Federation. According to him, close people were interrogated almost a month before initiating proceedings against him, and the testimony of L.Skorochodov and V.Isakov are false (they were interrogated the same day, i.e. on the 9<sup>th</sup> of August 2005). The third interested party emphasized that his arrival in Lithuania is related with the necessity to deal with the personal matters; he arrived in Lithuania three times in 2005; he travelled from the Russian Federation and back by a means of public transport; he spoke with his close people, acquaintances on both wire and mobile phones; thus, his location was not hidden. I.Babenko explained that he hoped that he would not be extradited, therefore, he was going to raise an issue of asylum later and he did so. In addition, I.Babenko explained during the court session that the Stavropolis branch office was the largest one in the whole Russia, therefore, he was very important to FSS which started to be interested in it since 2002: 2-3 prosecutions were brought against it where he was interrogated as a witness, however, they all have been withdrawn. I.Babenko noted that he knew about the internal auditing being carried out by the head office of "MENATEP" bank in Stavropolis branch office headed by him, however, he was not familiarized with the report on internal auditing, since he was on holiday. He was dismissed from the offices of manager on the 15<sup>th</sup> or 20<sup>th</sup> of May 2005 as a result of malfeasances (he does not know exactly, since he has not still taken work book back). I.Babenko stated that he is personally acquainted with M.Chodorkovski, since I.Babenko was introduced to him as the manager of the branch office after its establishment; he participated in the meetings for several times, he has met with M.Chodorkovski's father as well as other relatives and performed their assignments. I.Babenko did not deny during the court session that either "MENATEP SPb" Stavropolis branch, or Stavropolis region in general, or his name, or those enterprises and persons appear in his criminal cases are not referred to in the judgement rendered to M.Chodorkovski and others. He does not know that any of the rest 58 managers of branch offices would be prosecuted. I. Babenko claimed that he raised the credit for repayment of other credits. The representative of I.Babenko states that the Prosecutor General's Office of the Russian Federation purposely provided the facts conflicting with the actual situation. The direct links between "MENATEP" bank and the OC "JUKOS" have never been questionable to anyone, and they were officially proved by the judgement of Moscow Meshchanskij District Court of 16 May 2005. According to the representative of I.Babenko, the speech of the representative of the Prosecutor General's Office of the

Russian Federation in the press conference on 23<sup>rd</sup> of September 2005 shows that there is a threat of persecution for all the persons related with "Jukos" case.

/signature/

The representative of the third interested party noted that London Magistrates' Court refused to extradite D.Marujev, N.Chernyshev, A.Temerko by stating that although the acts of the abovementioned persons are in compliance with the features of criminal law, the charges brought by the Prosecutor General's Office of the Russian Federation are related with the "Jukos" proceedings which is politicized, therefore, if these persons were extradited, the fair proceedings would not be ensured for them (the abovementioned persons as well as I.Babenko are included in the list of persons related with "Jukos" case). According to the representative of I.Babenko, the resolution passed by the U.S. Senate on the 4<sup>th</sup> of October 2004, the position of U.S. State Department expressed on 16<sup>th</sup> of May 2005, the position of the Parliament of the United Kingdom expressed on the 12<sup>th</sup> of January 2005, resolutions passed by the European Council on 19<sup>th</sup> of November 2004 and in 2005 confirm that "Jukos" proceedings were biased: the rules dictated by the executive power of the Russian Federation are followed by the law enforcement bodies as well. The fact that the Russian law enforcement bodies misuse of power and seek for other goals has been proved by more than one judgment of the Strasbourg Court (judgement in the case of Gusinski against Russia determined on the 19<sup>th</sup> of May 2004). The representative of the third interested party also offered the opinion that the Prosecutor General's Office of the Republic of Lithuania is not the subject of this administrative legal relation and exceeded the limits of its competence by addressing the court. The representative agreed that the charge brought by I.Babenko is not related with the commission of political crime; however, he noted that pursuant to the practice of the European Court of Human Rights in case of extradition application, the applicant country shall provide unquestionable information which proves the validity of suspicions (charges). The Prosecutor General's Office of the Russian Federation has not done this, provided biased information (claimed that the international search of I.Babenko has been announced, although the information of the case shows that the latter arrived in Lithuania; the interrogation of neighbours confirmed that I.Babenko did not absconded from anybody; one of the points of charge is appropriation of 333 million Roubles, however, this exactly equals to the amount of the Loan Agreement which has not been submitted by the Prosecutor General's Office of the Russian Federation with interest and default interest less the repaid amount; the reports on inspections and audit carried out in Stavropolis branch office of "MENATEP SPB" in the period from 2002 until 2004 which would raise doubts on the validity of the suspicions). All this, according to the representative of the interested party, shall be considered as the attempt to suppress the facts, therefore, there is no and there may not be any guarantee that other information submitted by the Russian Federation is reliable.

## II.

Vilnius Regional Administrative Court satisfied the complaint by the judgement of 22 May 2006 and overturned the decision of the Migration Department under the Ministry of the Interior of the Republic of Lithuania No. 15/6-5-12PR-12 of 30 January 2006 which granted to the citizen of the Russian Federation, Igor Babenko, the refugee status and on the basis of which the permanent residence permit in the Republic of Lithuania has been issued. Pursuant to the Article 2 paragraph 17, the Article 5 paragraphs 1 and 3, the Article 19, the Article 56 paragraph 1 of the Law on the Proceedings of Administrative Cases (hereinafter referred to as LPAC), the Article 19 paragraph 2 subparagraph 1, the Article 13 paragraph 2 of the Law on the Procurator's Office that the Prosecutor General's Office of the Republic of Lithuania legally addressed the court and did not exceed the limits of its competence.

The documentary evidence of the case confirmed that I.Babenko legally arrived in the Republic of Lithuania on the 18 of May 2005 with the effective multiple visa (the case of the Department No. RUS 0522, c.p. 33, 38, 80-81). While responding to the request of legal assistance received from the Prosecutor General's Office of the Republic of Lithuania to extradite its citizen I.Babenko under suspicion of committing the criminal act specified in the Article 160 paragraph 4 and the Article 174<sup>1</sup> paragraph 1 to Russia, the Prosecutor General's Office of the Republic of Lithuania addressed Vilnius Regional Court with the request to extradite I.Babenko to the Russian Federation on the 25<sup>th</sup> July 2005 (extradition material No.lN-1-2006 p.1., p.2). The measure of restraint, i.e. the custody, which later

was extended several times, was imposed to I. Babenko by the order of Vilnius City District Court No. 1 of 1 July 2005 (case No. RUS 0522 c. p.31, extradition material No.IN-1-2006, v.1, p. 3-5, 226-227, v.2, p.85-86, 132-133).

/signature/

Vilnius Regional Court satisfied the statement of the Prosecutor General's Office of the Republic of Lithuania by its order of 8 September 2005 (extradition material No. IN-1-2006 v. 1, p.3-5), however, I.Babenko appealed the decisions to the Lithuanian Court of Appeals (extradition material No.IN-1-2006, 1 v., 1.243-245) which taking into account the decision on the grant of refugee status to I.Babenko has been adopted, adjourned a hearing until the decision on the grant of refugee status to I.Babenko is adopted by the specialized courts. The material submitted by the Department shows that I.Babenko submitted the asylum application to the Ministry of the Interior of the Republic of Lithuania on the 23<sup>rd</sup> of September 2005 on the basis of illegal persecution since the persons related to the activities of the oil concern "JUKOS" in one way or another were started to be persecuted after M.Chodorkovski case (case of the Department No. RUS 0522 c. p. 4-5, 12). During the original interrogation (on the 27<sup>th</sup> of September 2005) I.Babenko additionally stated that his family was also threatened, the wildcat searches have been carried out in the apartments of his children (case No. RUS 0522 c. p. 20-28). During the interrogation which took place on the 18<sup>th</sup> of November 2005, I.Babenko additionally pointed out that in November and December of 2004, the deputy head of the Department of FSS started to demand from him the information related with the activities of "JUKOS" by threatening him with the prosecution; the information necessary in the case against M.Chodorskovskis who initiated the establishment of Stavropolis branch office of "MENATE" bank in 1997 was required. I.Babenko claimed that he met and worked with Vladimiras Dubovas as well as had contacts with Michailas Brudno, i.e. the closest people round about of M.Chodorkovski who left Russia on time. Taking into account the fact that "JUKOS" cases are still under investigation, the FSS still needs the information from him, I.Babenko is convinced that if he returned to Russia, he would be sentenced; I.Babenko fears for his life since it would be better for the state authorities, if he would not exist (case No.RUS 0522 c. p.68-76). The Defendant on the basis of the report of the Division of Asylum Affairs No. 1 5/6-5-13PR-12RN of 17 January 2006 and taking into account the opinion as well as the official position of the bodies of foreign states (U.S. Senate, London Bow Street Magistrates' Court) expressed by the international means of mass media and the concern of the international organizations about the political implication context of the cases of M.Chodorkovski and other persons related with "Jukos" case and the list of the persecuted persons related with "Jukos" case including I.Babenko published in the website of M.Chodorkovski, stated that I.Babenko feels well-founded fear of being persecuted in his country of origin as a result of inclusion in the certain social group, i.e. group of the persons related with the case of OC "JUKOS", and granted the refugee status in the Republic of Lithuania to I.Babenko by the judgement No. 15/6-5-12PR-12 dated on the 30<sup>th</sup> of January 2006 and issued the permanent residence permit (case No. RUS 0522, c. p.305-310).

The court stated that legal relations of the dispute are regulated by the Law on the Legal Status of Aliens as well as the Description of Procedure Governing the Examination of Applications for Asylum and the Adoption and Implementation of Relevant Decisions of Aliens approved by the Order of the Minister of the Interior N. IV-361 of 15 July 2004. The court noted that the Applicant does not believe that I.Babenko is in compliance with the definition of refugee and does not consider him as a refugee and denies the belonging of I.Babenko to the certain social group and his completely well-founded fear of being persecuted. According to the statement of the court the concept used in the Law, i.e. "well-founded fear" means that the fear of asylum applicant of being persecuted may be recognized as the satisfactory reason to grant him asylum not only as a result of the fact that the asylum applicant feels such a fear, i.e. due to the subjective factor, but also as a result of the objective circumstances which are directly related with the applicant and which in each concrete case are subject to the evaluation of the authority which examines the asylum application. In order to assign a person to the certain social group, the tasks and goals of the Convention adoption shall be kept in mind. Such group shall not be necessarily interconnected, i.e. the recognition of its existence does not require to prove that the members of such group are acquainted with each other or are otherwise related. To distinguish the certain social group, it is enough to establish that people without the fear of being persecuted have the common feature, which distinguishes them from others. Such feature may be inborn, irreplaceable or any other characteristic important to human dignity. Usually, the members of such group may be persecuted on the grounds of disloyalty to the authority, other political convictions, economic activities or just the fact that such

group exists itself (the explication of experts of 6-8 September 2001 "Refugee Protection in International Law", 1992 m. UNHCR "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees").

/signature/

According to the statement of the court, there is no dispute in the case on whether the social group of the persons related with the OC "JUKOS", however, the Applicant considers that I.Babenko have no links with that group. After evaluation of the particular international practice and the established circumstances, the College decided that officially I.Babenko may be assigned to the persons related with so called "Jukos" case on the grounds of the fact of existence of such group and the fact that he worked as a manager of Stavropolis branch office of the "Menatep Sankt Peterburg" bank the head office whereof is closely linked through its activities with the convicts, M.Chodorkovski and P.Lebedev. Stavropolis settled accounts and perform other bank operations with the customers of "Menatep Sankt Peterburg" bank. However, in opinion of the court, I.Babenko's fear of being persecuted is not objectively related (may not be related) with being a member (participant) of this social group and is not objectively well-founded (this is proved by the documentary evidence in the case, the explanations of I.Babenko himself, chronology of the events related with him and treatment of I.Babenko during them).

The court without considerations and denials of the political character of so called "Jukos" case and its validity judges that I.Babenko personally is not related with this case anyway and he shall not be subject to the evaluations of the abovementioned foreign courts and international organizations. There, the judgement of the Bow Street Magistrates' Court of 18 March 2005 not to extradite Marujev and Natalija Chernysheva to Russia has been grounded on the fact that these persons are accused of cooperation with M.Chodorkovski and P.Lebedev while committing the criminal acts on the grounds of which the latter have been sentenced, therefore, the conclusion has been made that the prosecution of these two defendants in that case (i.e. the case of M.Chodorkovski and P.Lebedev) is also politically biased (the extradition case of the Prosecutor General's Office of the Republic of Lithuania, v. 1, p.36-46).

According to the statement of the court, the fact that I.Babenko is not objectively related with "Jukos case" is also proved by Loan Agreement of 17 December 2004 for lending 118,950,000 Roubles (volume 1, p. 10-19 of the same case) signed by the manager of bank's branch office with the citizen I.Babenko, i.e. with himself (there is no data which would prove that it was confirmed (registered, arranged, etc.) by the management bodies or managers of the head office of "Menatep Sankt Peterburg" bank), and the judgements of Stavropolis Region Jesentuky City Court of 10 June 2005 and 15 June 2005 show that the shareholders of this bank revoked the right of the branch offices of the bank to grant the credits on their own account in June of 2004 (v. 1, p. 71,84 of the same case). It has been established by a means of the certificate of the criminal case No. 50047 that the proceedings regarding the appropriation of 118,950,000 Russian Roubles has been started not on the grounds of the abovementioned wish of the power structures of the Russian Federation to "tie" I.Babenko with "Jukos" case, but on the grounds of the statement of the Chairman of the Board of AB "Menatep Spb" of 17 February 2005 to start the proceedings on the grounds of the results of official inspection and accounting (internal auditing) act carried out in the period from December of 2004 until February of 2005. It has been established during this inspection that I.Babenko by misusing of power of the manager embezzled 118.95 million Roubles in April of 2005, although he was in Stavropolis, I.Babenko avoided to arrive in the Prosecutor's Office; he did not took the work book back after the dismissal from his office, etc. (v. 1, p. 108-118 of the same case, p. 83-93 of the administrative case). During the court session I.Babenko did not deny that he had known about the internal auditing carried out by the head office in his branch office, however, he stated that the content of the report on internal auditing is unknown to him, since he was on holiday from February until May of 2005, and in May of 2005, he was dismissed on the grounds of malfeasances. The conclusion was based on the basis of factual circumstances that the Loan Agreement referred to very often by I.Babenko is illegal, therefore, the amount of it is considered as appropriated by I.Babenko misusing of his official position, and the agreement itself is not only the subject of civil legal relations, although the term for repayment of debt has not expired, as I.Babenko claims. The statement that the bodies which brought prosecution against I.Babenko (the Prosecutor General's Office of the Russian Federation and territorial divisions of FSS) suppressed this agreement has been evaluated as unfounded, since the judgements of Stavropolis Region Jesentuky City Court of 10 June 2005 and 15 June 2005 (v. 1, p. 56-92 of the same case) show that I.Babenko is accused of embezzlement of funds of the branch office which was entrusted to him and inter alia signed the sham loan agreements. On the



basis of analysis of bill of indictment of the judgement of Moscow Meshchanskij District Court of 16 May 2005 rendered to M.Chodorkovski ir L.Lebedev (p.46-49 of the administrative case and annex), the court made the conclusion that the events related with the case, referred to as the criminal acts, which have been committed in Stavropolis region or the Stavropolis branch office of the “Menatep Sankt Peterburg” bank as well as economic entities and persons who appear in the documents of prosecution brought against I.Babenko (I.Babenko does not deny this) have not been referred in it.

This means that I.Babenko is not directly and personally related to so-called “Jukos case” and cannot have any objective sense of fair of being persecuted precisely because of “Jukos case” or relationship with M.Chodorkovski and (or) his environment. As the court states, his demeanour justifies the absence of any such fair – he would not deny that Federal Security Service (*FSB*) shows ostensible interest in him as a person from M.Chodorkovski environment possibly having constructive information in his disposition since 2002, that a few criminal cases were brought, however he had not gone into hiding, although had similar opportunities as in 2005, in 2003, in his words, he was also present in Lithuania. Presumption made on the grounds of the collected evidences that the facts of I.Babenko are pertinent to the causes and outcomes of his dismissal from the office, the criminal case brought against him for the abuse of office and financial offences and eventual outcomes thereof.

The court has ruled that the provisions of paragraph 3 of Article 88 of the law, requested to be applied, conform to paragraph b of Part F of Article 1 of Geneva Convention Relating to the Status of Refugees (1951), and it shall be determined with respect to the application thereof that: 1) prior to arrival to the Republic of Lithuania the person has committed an offence; 2) the offence is grave and of nonpolitical nature and 3) there is solid ground for such presumptions. I.Babenka acknowledged that the criminal acts listed in the charge against him are deemed nonpolitical and grave, nevertheless he in principle denied the commitment of the offences and argued that the General Public Prosecutor’s Office of the Russian Federation (RF) did not submit data for solid grounding, and on the contrary provided only tendentious information. Explications of the Convention content drawn by the United Nations High Commissioner for Refugees (‘The Exclusion Clauses: Guides on their Application’ of the 1<sup>st</sup> December 1996, expert explication ‘Refugee Protection in International Law’ of the 3-4<sup>th</sup> May 2001) point out that in terms of the Convention application the ‘solid basis’ (‘solid reasons’) is comprehended as a necessity to give explicit and sufficient proofs in order to make inference that the committed offence was of a nonpolitical nature and that it is a satisfactory basis for refusing refugee status. The gravity of the issue and eventual outcomes of unfair resolution have to be considered, and efforts have to be put in achieving at least such proof level which is requisite for convicting a person. There could be no precarious presumptions, suppositions, there has to be achieved the equilibrium between the committed crime and grounds for persecution. In this case responsibility for proof falls on the party pursuing to prove the existence of solid basis, i.e. the General Public Prosecutor’s Office of the Republic of Lithuania. The Board assumes that the declarant in this administrative case and the case related to extradition of I.Babenko has collected and presented before the court explicit and sufficient evidences allowing inference of the commitment of nonpolitical offence, and that those are neither presumptions nor suppositions, and in principle they in part or in full make sufficient basis for refusing refugee status due to the reasons stipulated in paragraph 3 of Article 88. Having considered the motives, evidences, collected by the General Public Prosecutor’s Office and the territorial bodies FSB of Stavropol region of the Russian Federation and representing the duration, scope, specific commitment manner and a great number of episodes of the criminal acts I.Babenko is suspected of, which make the possibility of gross falsification of the case on the grounds of political or other motives (No. of case at General Public Prosecutor’s Office 1N-1-2006, volume 1, 1.2, 56-92, 108-118, 131-147, 155-484), of the ruling of Vilnius District Court of the 8<sup>th</sup> September 2005, by which I.Babenko was extradited to the Russian Federation, the court arrived at such a conclusion. Having estimated the aforementioned circumstances the court ruled that Igor Babenko shall not be deemed a refugee in terms of the meanings of Geneva Convention (1951) and Articles 86 and 87 of Law on Legal Status of Aliens of the Republic of Lithuania. Moreover, to the Board’s opinion, even a contrary conclusion granting of refugee status to him is not practicable due to the reasons referred to in Part 3 of Article 88 of the law.

By appeal third interested party Igor Babenko asks to annul the ruling of Vilnius District Administrative Court of the 22<sup>nd</sup> May 2006, maintaining the effect of Resolution of the Department No. 15/6-5-12PR-12 of the 30<sup>th</sup> January 2006. The third interested party also asks appealing to Constitutional Court of the Republic of Lithuania with a request to investigate into whether the right to protect public interest provided for Article 19 of the Law on the Prosecutor's Office of the Republic of Lithuania may be explicated extensively and serve as a basis for the Public Prosecutor to apply to court with respect to the validity and legitimacy of an individual regulatory enactment adopted by the central state administrative entity under a special law stipulating the exclusive right of the state administrative entity to solve issues of granting asylum whereas such right is not provided for in the given law, and whether this does not contravene the provisions of Articles 5 and 118 of the Constitution of the Republic of Lithuania. The appeal is substantiated by the following arguments:

1. To the appellant's mind, the court has unduly explicated and applied the rules of law regulating the public prosecutors' right to appeal to court while defending the public interest and the competence of the public prosecutor's office, unsoundly extensively explicated and applied the rules of law regulating the limits of public prosecutors' powers in defending public interest. He states that the content of Part 1 of Article 56 of the Law on Administrative Proceedings leads to the conclusion that the public prosecutor is entitled to appeal to court in order to defend public interest in such event only if such right is provided for in the laws infringement of which he observes (the rules of law embrace cases provided for in the laws). In this case the prosecutor's right to defend public interest is not provided for in the law, therefore, the appellant assumes that the prosecutor may not be a part to the administrative case. Such explication of the law is also supported by Part 1 of Article 19 of the Law on the Prosecutor's Office. The appellant notes that Article 13 of the Law on the Prosecutor's Office does not detail prosecutors' rights and duties, and in accordance with Part 1 of Article 56 of the Law on Administrative Proceedings the prosecutor may, but is not bound to appeal to court.

2. The court produced no answer to whether there generally is any public interest in this particular dispute and whether legalization of the right to defend public interest indetermination of which, to the appellant's mind, unsoundly extend the limits of the competence of the public prosecutor's office, by Article 19 of the Law on the Prosecutor's Office does not contravene the competence of the Prosecutor's Office defined by the Constitution. The appellant points out that in the absence of the definition of 'public interest' in the law, the concept should be interpreted in terms of semantics and logics. According to the meanings of the words 'public' and 'interest' denoted in the Contemporary Dictionary of the Lithuanian Language, in terms of semantics and logics the concept of 'public interest' would bear the meaning of issue open to everyone of the whole society and arousing or able to arouse interest. The appellant claims that the absence of the limits of the concept and indetermination thereof is obvious, and the use thereof make any interference in the spheres of state, municipal, administrative, judicial or any other regulation possible. He assumes that the Declarant seeks to defend not the public interest, but the interest of the prosecutor's office in the particular process of extradition. The right of the prosecutor's office to defend public interest, in the appellant's words, is not defined in the Constitution either (Article 118). The resolution of Constitutional Court of the Republic of Lithuania of the 14<sup>th</sup> February 1994, in accordance with which rules of the respective articles of the Law on the Prosecutor's Office in effect, determining prosecutors' powers to control the validity of management acts, contravene Articles 5, 109 and 118 of the Constitution of the Republic of Lithuania, sustain that the prosecutor's power may not be artificially extended. The appellant argues that the declarant unfairly exercises its rights, which is substantiated by the fact that of a repeated appeal to Vilnius District Court regarding extradition of I.Babenko on the 30<sup>th</sup> December 2005.

3. The appellant notes that in the motivation part of the resolution the court states that the appeal is rejectable, yet decided to satisfy the appeal. The appellant emphasizes that in conformity with the law (Article 138), Article 127 and Part 1 of Article 130 of the Law on Administrative Proceedings, in the revolutionary part of the resolution the court on no grounds established that the decision may be appealed against within only 7 days since its adoption thus unsoundly circumscribing his possibilities to get thoroughly familiar with the arguments of the court and prepare his opinion on the adopted decision, infringing his rights, determined in Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms.

/signature/

4. The appellant claims that the court estimated the material collected in relation to this case ex-parte, and did not consider the proofs negating or bringing doubt in the statements contained in the requests of the General Public Prosecutor's Office of the Russian Federation. The appellant points out that the request of extradition of a person should be accompanied by reasoned and consistent data evidencing the commitment of the crimes (European Court of Human Rights maintains similar position). However the Russian party failed to submit respective data with regard to the third interested party. One of the charges is appropriation of 133 m Rubles, which includes 119 m Rubles as a credit amount and interest and delay fee with consideration of a part of the repaid loan. I.Babenko gave sufficient explanations regarding the circumstances of loan conclusion (the agreement was concluded with the knowledge of the bank management, and bodies of crime prevention of the Russian Federation could have no information on the conclusion thereof, but concealed it from the Lithuanian party). The appellant argues that the pledge agreement submitted to the court denies the fictitiousness of the conclusion of credit agreement. Written proofs also deny the fact of his escape and secret arrival to Lithuania. The conveyed material represents obvious relationship with "Jukos" or M.Chodorkovski case. According to the material submitted by the Russian side, Lijev operated together with him, however it was Lijev who brought charges against I.Babenko for appropriation of funds (criminal case on the said fact was withdrawn upon the failure to prove the circumstances referred to by Lijev). The appellant insists that the material of the Russian side contains distorted evidence of witnesses who allegedly confirm his escape and hiding. The appellant criticizes the statement of the court that the ruling of Moscow Meschianskij Region Court of the 16<sup>th</sup> May 2005 in respect of M.Chodorkovski and P.Lebedev events, economic entities and persons related to the case of the third interested party are not mentioned at all, and claiming that had all related persons and event been noted in the aforementioned ruling, the official representative of the General Public Prosecutor's Office of the Russian Federation would not have to make public announcements on the instigation of new cases related to acquisition of privatized companies by oil concern 'Jukos' and 'Menatep' group, distribution of shares, dividends and profit, and the ruling itself would be at least several times greater in volume. These and other incongruities, in the appellant's opinion, are sufficient to question the goals referred to in the requests of the General Public Prosecutor's Office of the Russian Federation and make persuasive assumption that by asking to extradite I.Babenko to Russia the bodies of crime prevention of the Russian Federation not only strive to prosecute him and punish for the committed crimes, but also to has other goals, most probably to obtain information on the circumstances of acquisition of companies previously privatized by oil concern 'Jukos' and 'Menatep' group, shares and their distribution, profit and its distribution, etc. (such information is in the disposition of the third person). The fact that Russia not always witnesses fair and objective legal proceedings, and the lawyers, defending persons related to so-called M.Chodorkovski procedure, are persecuted, as the appellant points out, is proved not only by formal statements of the representatives of the bodies of crime prevention of the Russia, but also decisions and resolutions of international authorities as well as procedural decisions of foreign countries in similar or analogous cases. European Court of Human Rights (ruling in the case of Gusinki vs. Russia of the 19<sup>th</sup> May 2004) has determined that the bodies of crime prevention of Russia and event courts may abuse the power and initiate punitive persecution in pursuance of other goals. The circumstances set forth, to the appellant's mind, allow inference that his offence was directly related to the politicized so-called 'Jukos' proceedings, because he not only was a part to the development of Stavropol office of 'Menatep SPb' bank, which was under the immediate control leaders of 'Jukos' and 'Menatep' group M.Chodorkovski and P.Lebedev, but also was involved in privatization of the refineries of the area, as the said office provided them with financial service. The appellant assumes that the said actual circumstances allow to state that his fair of being persecuted is absolutely reasonable and he is to be deemed a refugee in terms of Article 1 of Geneva Convention (1951) and Articles 86 and 87 of the Law on the Legal Status of Aliens of the Republic of Lithuania, and provisions of Part 3 of Article 88 of the law should not be applicable in his case.

/signature/

In its response to the appeal the General Public Prosecutor's Office of the Republic of Lithuania disagrees with the requirements of the appeal. The response contains the following main arguments for disagreement with the appeal:

1. The decision of the Court scrutinizes in detail the public prosecutor's right to appeal to court provided for in the laws in the event of necessity to defend public interest or rights and interests protected

by the laws of the state, municipality or persons, and gives a reasonable conclusion that the General Public Prosecutor's Office has legally appealed to court without prejudice to its competence. The declarant claims that the appellant did not go into the concept of public interest in terms of law (Article 118 of the Constitution of the Republic of Lithuania, Decision of the Supreme Administrative Court of the Republic of Lithuania of the 23<sup>rd</sup> January 2004 in administrative case No. A<sup>3</sup>-11-04 and Decision of the 23<sup>rd</sup> November 2005 in administrative case No. A13-1725/2005). The declarant notes that in the practice of the Constitutional Court of the Republic of Lithuania anything impartially significant, necessary and valuable to the society is deemed to be the subject of public interest. In its decision of the 6<sup>th</sup> May 1997 the Constitutional Court of the Republic of Lithuania has pointed out that the implementation of public interest, as public interest acknowledged by the state and protected by law, is one of fundamental conditions of the existence and development of the society itself, whereas in the decision of the 19<sup>th</sup> September 2002 (among other constitutionally significant goals named as public interest) it noted that crime prevention, investigation and identification make public interest. The declarant also refers to advising of the Department of Civil Proceedings of the Supreme Court of the Republic of Lithuania of the 29<sup>th</sup> January 2004 as well as the decision of Vilnius District Administrative Court of the 22<sup>nd</sup> May 2006. The declarant argues that law sees public interest as just and equal application and explication of rules of law. Public interest is one of the interests of legal society, whereas the violation thereof gives a basis for defending of public interest at court. Rules of law specifying particular cases when it is incumbent upon the public prosecutor to bring a lawsuit or appeal for defending of public interest, as the declarant puts it, have to be explicated as binding the public prosecutor to defend public interest – by legalizing the prosecutor's appeal to court, the legislator presumes the existence of public interest.

2. The declarant states that by ratifying of European Convention on Extradition of the 13<sup>th</sup> December 1957, Supplemental Protocol to European Convention on Extradition of the 15<sup>th</sup> October 1975 and the Second Supplemental Protocol to European Convention on Extradition of the 17<sup>th</sup> March 1978 by resolution of Seimas of the Republic of Lithuania No. 1-839 of the 4<sup>th</sup> April 1995, Lithuania took obligation before the Convention member states in compliance with the rules determined by the Convention to extradite all persons, falling under legal proceedings by a competent authority of the requesting country or which are wanted by their countries for the purpose of giving effect to judgement or detaining the said persons. The Ministry of Justice or the General Public Prosecutor's Office of the requesting country shall submit a written request for extradition of a person to the Ministry of Justice or the General Public Prosecutor's Office of the requested country. In this manner the fulfillment of obligations in respect of extradition of the Republic of Lithuania had been assigned to the General Public Prosecutor's Office, which turned to be competent to represent interests of the state and society through extradition of persons. Having solid grounds for such assumption, the public prosecutor's office notifies the Department that it had adopted an illegal decision by which complicated the performance of the obligation of the Republic of Lithuania to extradite a person and debased international repute of Lithuania as a legal country through defending of public interest.

3. The response notes that writing mistakes in the motivating part of the decision have been adjusted by the decision of Vilnius District Court of the 31<sup>st</sup> May 2006.

4. The declarant points out that Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms is intended to guarantee the rights of the person incriminated with commitment of a crime, while in this case the decision was adopted not in the criminal, but administrative case. Moreover, Article 138 of the Law on the Legal Status of Aliens of the Republic of Lithuania expressly designates that an alien may appeal against the decision adopted under the law to district administrative court within 7 days after the adoption of the decision. Article 138 of the Law on the Legal Status of Aliens does not refer to other parties of the procedure (an alien alone), nevertheless, as the declarant states, the decision of Migration Department is the decision of an administrative body which may be disputed on the basis and by the order set by the Law on Administrative Proceedings.

/signature/

5. As the declarant states, the court has looked into and assessed all evidence provided by the General Public Prosecutor's Office of the Russian Federation and the participants of the procedure, thus the appellant deliberately misleads the court by claiming that the court decision is ambiguous and motivating the statement by the part of judicial investigation and conclusions which he find beneficial for himself, distorting the ideas contained in the decision of the court of first instance. Since Part 3 of Article

138 of the Law on Administrative Proceedings provides that new evidence not submitted before the court of first instance shall not be considered unless the court recognizes the reasons of not submitting the evidence before sound, the declarant asks to ignore the new evidence presented before the court of appeal by representative of the third interested person V.Petravicius – pledge agreement and annexes thereto concluded by Manager of the branch office of the bank I.Babenko and private person I.Babenko on the 17<sup>th</sup> December 2004. The Declarant claims that the new and obtained in a dubious manner evidence is presented in order to delay hearing of both the administrative case and the case of extradition. The court of first instance has thoroughly looked into the circumstances of the case, correctly explicated and applied effectual legal regulations, adopted a legal and reasonable decision, therefore, in the declarant's opinion, there is no basis for satisfying of the appeal on the basis of the motives contained therein, appealing to the Constitutional Court of the Republic of Lithuania, and annulling of the decision of the court of first instance.

In its response to the appeal the Migration Department under the Ministry of the Interior of the Republic of Lithuania is asking to partially satisfy the appeal by annulment of the decision of Vilnius District Administrative Court of the 22<sup>nd</sup> May 2006 as unsound and unlawful. The response contains the following arguments of disagreement with the appeal:

1. The defendant explains that the so-called 'non-application provisions' of Article 88 of the Law on the Legal Status of Aliens have been transposed into the law from Part F Article 1 of Geneva Convention Relating to the Status of Refugees (1951). In compliance with paragraph 140 of the guide to the procedures and criteria of determination of the refugee status devised by the Board of United Nations High Commissioner for Refugees, Part F Article 1 of Geneva Convention (1951) shall be applicable to only to those persons who conform to the definition of a refugee defined in Part A of Article 1 of the aforementioned Convention. In the same manner Article 88 of the law should be applied – non-application provisions shall be valid for the persons proved to be refugees, i.e. suffering from reasonable fear of persecution due to any of the reasons referred to in the Convention (1951) (race, religion, nationality, belonging to a particular social group or political attitudes). With regard to the gravity of the committed crime, the persons should not be granted the status of refugee. The defendant argues that by claiming that Igor Babenko cannot be granted the status of refugee due to the reasons specified in part 3 of Article 88 of the law, Vilnius District Administrative Court has to admit that Igor Babenko simultaneously conforms to the criteria of Article 86 of the law, i.e. the definition of refugee, since according to the law and strictly under such conditions non-application provisions may be applied.

2. The defendant calls for attention to the international obligations of the Republic of Lithuania under the Convention on Protection of Human Rights and Fundamental Freedoms (1950) (Article 3 establishes the principle of irreclaimability, comments of the committee of the Council of Ministers to recommendations (2005) 6 on denial of the status of a refugee in accordance with Part F Article 1 of Geneva Convention of the 28<sup>th</sup> July 1951). It is noted that the person who unprotected in terms of non-application provisions in accordance with the Convention of 1951, shall in any way remain safe from extradition to the country threatening with treatment prohibited by Article 3.

3. In its conclusion, which served as the basis for the appeal, the Department states that with regard to the fact that 'Charges against I.Babenko [in the Russian Federation] are dubious and equated

/signature/

to persecution in the context of the Convention relating to the Status of Refugees (1951) and Article 86 of the Law on the Legal Status of Refugees of the Republic of Lithuania', there is no necessity of applying Article 88. To the defendant's mind, the overall case material proves that legal proceedings taken against I.Babenko parallel to persecution in the meaning of the Convention (1951), and such evidence is not denied by the facts set forth in the decision of Vilnius District Administration Court. The defendant points out that Western countries agree that the investigation, hearing and ruling in the case of M.Chodorkovski were politically motivated. Suspecting that investigation of I.Babenko case is related to 'Jukos' case, the statements of the General Public Prosecutor's Office of the Russian Federation, as one of the potential persecution subjects, should be considered with due care. The defendant assumes that the decision of Vilnius District Administrative Court denying the relation of I.Babenko case with 'Jukos' case is not reliable. It is noted that the relationship in respect of M.Chodorkovski and P.Lebedev was determined and proved by the court in the decision of Moscow Meshanskij Region Court of the 16<sup>th</sup> May 2005. On Page

2 of the said court decision it is stated that one of the convicts P. Lebedev was Chairman of the Board of Directors of public limited liability company bank 'Menatep Sankt Peterburg' (I. Babenko took the office as the Manager of one of the branch offices of the bank). Furthermore, the decision of Moscow Meschanskij Region Court reveals that one of the crimes incriminated to M. Chodorkovski and P. Lebedev is that they established fictitious legal persons under their own full control, through which they transferred funds to certain banks within the Russian Federation, 'Menatep Sankt Peterburg' being among them. Moreover, Moscow Meschanskij Region Court pointed out that M. Chodorkovski and P. Lebedev had the control of the said bank. It is noted that the decision contains an explanation of M. Chodorkovski according to which he has neither established legal persons for illegal purposes nor controlled the activity of banks ('Menatep Sankt Peterburg' being among them). The defendant argues that it is obscure why in one case explanations of Chodorkovski played no role and did not prevent from returning a verdict of guilty, whereas in the other case the authorities of the Republic of Lithuania are induced to accept nearly identical statement of the person. Thus the authorities of the Russian Federation believe in I. Babenko relations with 'Jukos' case through 'Menatep Sankt Peterburg' bank, and the General Public Prosecutor's Office of the Russian Federation, being definitely aware of that, deliberately provided information obviously incongruous with the actuality, seeking at any price to achieve extradition of citizen of the Russian Federation I. Babenko. Besides, the Department denies claiming that M. Chodorkovski and I. Babenko know one another in person.

4. Attention was called to the fact that the decision of Moscow Meschanskij Region Court was adopted on the 16<sup>th</sup> May 2005 and it was the day after that the criminal case was brought against I. Babenko, although the offences incriminated to him were committed in the period of 2002-2004 (as well as his search was announced and request for extradition submitted). All the said point to the fact that only the verdict of guilty in the case of M. Chodorkovski gave the basis for the persecution of I. Babenko. With regard to the aforementioned reasons it is obvious that the statement of the Department concerning the presence of the social group of the persons related to 'Jukos' case is reasoned. Assessing the response of the General Public Prosecutor's Office of the Russian Federation, it is quite obvious that the persecution of I. Babenko is of a political nature. Attention is paid to the fact that it is beside the point whether the reason for persecution or sense of fair of persecution is true or imaginative to the persecutor (state authorities may consider the person belonging to a specific social group and therefore persecute him/her). This provision is actualized by Part 2 of Article 10 of Directive of the European Council 2004/83/EB of 2004 concerning attributing of citizens of the third countries and persons without citizenship to refugees or persons in need of international protection, status thereof and essential standards of the provided protection. Thus the conclusion of the Department concerning the application of definition of a refugee, discussed in Article 86 of the law, to Igor Babenko is absolutely reasonable and legal.

5. The response represents that not only proofs of connection between the cases of I. Babenko and 'Jukos' provided by the General Public Prosecutor's Office of the Russian Federation, but also evidence of witnesses on whether Igor Babenko was aware of the legal proceedings taken against him are doubtful.

Besides, neither such evidence nor the fact that Igor Babenko has sought asylum in the Republic of Lithuania has no essential influence on the adoption of decision concerning provision of asylum to him. The defendant points out that neither Geneva Convention Relating to the Status of refugees (1951) nor the Law on the Legal Status of Refugees of the Republic of Lithuania provide for no terms pertaining to submission of application for asylum provision. Moreover, it is obvious that the citizen of the Russian Federation expected to have the issue of his political persecution settled within the frame of the case of extradition and therefore not to have to seek asylum. With the proof of political motivation of criminal persecution of Igor Babenko in the Russian Federation, it no longer important when he precisely became aware of the criminal case being brought against him, this shall also have no impact on the hearing of the case. In the defendant's words, evidence of L. Skorochodov given by the General Public Prosecutor's Office of the Russian Federation is not quite comprehensible, and their importance to the case is not clear at all. The fact, based on the collected evidence, that in February 2005 Igor Babenko came to Lithuania to participate in the funeral of his mother, then left for Russia and returned to Lithuania once again only on the 18<sup>th</sup> May 2005, as stated by the defendant, proves that Igor Babenko did not hide from the Russian authorities. The Migration Department assumes that the causality between the loan agreement signed by Igor Babenko and the appellant's connection with 'Jukos' case determined Vilnius District Administrative Court is illogical and unsubstantiated. In respect that the Migration Department regards the instigation of a criminal case against Igor Babenko as persecution within the meaning of Article 86 of the Law on the Legal Status of Aliens, the appellant's fair related to the criminal case brought against him

and all eventual outcomes, as said in the response, not only does not contravene but also fully conforms to the criteria used to determine the status of a refugee defined in Geneva Convention Related to the Status of Refugees (1951) and the Law on the Legal Status of Aliens. The Department notes that it has by competence considered the application of Igor Babenko for asylum and determined that he conforms to the definition of a refugee, and through fulfillment of international obligations of the Republic of Lithuania undertaken under Geneva Convention Related to the Status of Refugees (1951) adopted a decision based on the requirements of regulations of law and determined facts. The defendant emphasizes that the person granted the asylum right is not subject to extradition under the Article 62 of the Agreement between the Republic of Lithuania and the Russian Federation on legal assistance and legal relations in civil, family and criminal cases. The defendant points out that nonfulfillment of the said provisions would gravely infringe international obligations of the Republic of Lithuania and one of the fundamental principles of law of international agreements – *pacta sunt servanda* established by Article 26 of Vienne Convention Related to Law of International Agreements (1969) and Part 1 of Article 11 of the Law on International Agreements of the 22<sup>nd</sup> June 1999 of the Republic of Lithuania.

#### IV.

The Judicial Board  
states:

Concerning the framework of the administrative dispute

Hearing of the appeal of the third interested person entails resolving of two fundamental issues: first, issue of procedural law – whether the General Public Prosecutor’s Office of the Republic of Lithuania is a proper declarant in appealing against the decision of the Migration Department on the granting of the status of a refugee; second, issue of substantive law – whether the defendant – the Migration Department under the Ministry of the Interior of the Republic of Lithuania – reasonably granted the third interested person the status of a refugee.

The General Public Prosecutor’s Office of the Republic of Lithuania is not a party to administrative legal relation of granting of the status of a refugee. According to legal regulation defined in Section Three ‘Procedure of Granting of Asylum in the Republic of Lithuania’ of the Law on the Legal Status of Refugees the Migration Department under the Ministry of the Interior of the Republic of Lithuania is the only state authority competent to decide on the issues of granting of the status of a refugee.

/signature/

It has to be noted that Part 2 of Article 118 of the Constitution of the Republic of Lithuania (version of Law No. IX-1379 of the 20<sup>th</sup> March 2003 of the Republic of Lithuania) provides that ‘in cases provided for by the laws the public prosecutor defends rights and legal interests of a person, society and state’.

Article 2 ‘The Prosecutor’s Office, Its Status and Functions’ of the Law on the Prosecutor’s office of the Republic of Lithuania (version of Law No. IX-1518 of the 22<sup>nd</sup> April 2003) establishes that:

‘1. The Prosecutor’s Office is a state authority performing functions defined in the Constitution of the Republic of Lithuania, the present Law and other laws. The Prosecutor’s Office helps to safeguard legality and actualization of justice by court.

2. On the basis and by the procedure provided by the laws the Prosecutor’s Office:

<...>

7) Defends public interest; <...>’.

Paragraph 3 of Part 3 of Article 5 of the Law on Administrative Proceedings of the Republic of Lithuania entitles the prosecutor to appeal to administrative court in defence of the state or other public interests.

The Judicial Board resolve that the aforementioned regulations of law give procedural basis for the prosecutor to appeal to court and in the considered case – against the decision of the Migration Department concerning granting of the status of a refugee. There may be undoubtedly emerge such actual situations when wrong resolution of in respect of granting of asylum may by the outcomes cross the

framework of this legal relation and infringe the state or public interests. Whereas the question whether the decision of granting the status of a refugee in the given case infringes public interest is the issue of assessment of substantiation of the prosecutor's appeal and shall be settled through hearing of the case in principle.

Doubts of the third interested person concerning on the constitutionality of the provisions of the Law on the Prosecutor's Office are not justified, the interests of both the state and the society are public, therefore the Board states that there are no inconsistencies in the regulations of law applicable in the case.

Legal relationships of granting of the status of a refugee in Lithuania are regulated by the Law on the Legal Status of Aliens of the Republic of Lithuania (No.IX-2206 of the 29<sup>th</sup> April 2004).

Part 1 Of Article 86 of the Law 'Granting of the Status of a Refugee' describe the criteria to be met by the person seeking asylum:

'1. The status of a refugee is granted to the applicant who due to reasonable fair of being persecuted for race, religion, nationality, belonging to a specific social group or political attitudes is beyond the border of the country of his/her citizenship and is not able or is afraid to benefit from the state defence or does not hold a respective citizenship of such country, is beyond the border of the country of his/her residence and due to the defined reasons is not able or is afraid to return thereto in the absence of reasons determined in Article 88.

Article 88 of the Law 'Causes of denial of the status of a refugee or supplemental protection' establishes the so-called non-application provisions':

'The applicant meeting the criteria specified in Articles 86 and 87 shall not be entitled to the status of a refuge of supplemental protection in the event:

- 1)that he/she is provided with assistance and protection of United Nations authorities and organizations, except for the Board of the United Nations High Commissioner for Refugees;
- 2) the authorities of the country of his/her residence recognize his/her rights and duties pertaining to the citizenship of such country;
- 3) there is a solid basis to assume that prior to arrival to Lithuania the person has committed a grave non-political offence and is charged with a crime contradicting the goals and principles of the United Nations.

/signature/

4) there is a solid basis to assume that the person has committed a crime against humanity or committed a war crime or executed genocide as they are defined in international agreements of the Republic of Lithuania and other sources of international law.'

The national regulations of law referred to fully conform to legal regulation established by international Convention Relating to the Status of Refugees (1951) (which took effect in Lithuania on the 27<sup>th</sup> July 1997), therefore the Judicial Board shall follow them in settling the dispute in the administrative case on the reasonability of grating of the status of a refugee to the third interested person.

*Concerning conformity of the third interested person to the criteria of the legal definition of a refugee*

The considered decision of the Migration Department 'On granting of asylum (the status of a refugee) to citizen of the Russian Federation Igor Babenko' was adopted on the basis of the conclusion of the Department for Asylum Issues of the 17<sup>th</sup> January 2006. The defendant substantiated its decision by the fact that the third interested person has reasonable sense of fair of being persecuted in the Russian Federation due to belonging to 'the group of persons related to the case of oil concern Jukos and Mikhail Chodorkovski', since he is a potential source of information for official authorities.

While considering of the issue of reasonability of the decision it has to be determined whether consideration of the application of the third interested person was based on the sufficient information, allowing inferring that: first, there exists a so-called social group of 'persons related to the case of oil concern Jukos (M.Chodorkovski)'persecuted by the official authorities in the Russian Federation; second, that Igor Babenko may be attributed to such social group.

*In respect of the first issue, the Board states that data collected in relation to consideration of application for asylum undoubtedly confirm that the procedure of so-called 'Jukos (M.Chodorkovski)' in the Russian Federation was politicized, i.e. criminal persecution was based not on the causes of a criminal nature, but instigated through the pursuance of the official authority to frustrate political*



*opposition and regain the control over the strategic economical assets. Moreover, the official authorities discriminated persons having undergone criminal persecution in this case, which went to a worse extent than in case of persons prosecuted for a similar offence. This obviously means that the persons, which the authority of the Russian Federation relates with 'Jukos (M.Chodorkovski) case', have grounds for the fair of persecution in the Russian Federation.*

Those inferences are substantiated by formal documents of international organizations and authorities, official position of foreign powers and courts and actual data on the process of M.Chodorkovski case and its circumstances, contained in the material collected by the Migration Department. The following should be noted as evidence sources and actual data of utmost importance:

On the 11<sup>th</sup> April 2005 international organization for protection of human rights Amnesty International made a public announcement concerning the cases of M.Chodorkovski and persons related to oil concern 'Jukos', in which it expressed its concern with the situation in terms of human right in the Russian Federation in the context of criminal cases related to 'Jukos'.

In December 2005 in its official statement Parliamentary Assembly of the European Council regarded arrests of 'Jukos' management as the pursuit of the power of Russia to dispose of political opponents and regain economic positions; in the Resolution of the 15<sup>th</sup> December 2005 the European Parliament pointed out that within last years democracy in Russia was getting in principle constrained through the state control of mass media, censorship of press, termination of activities of independent media, restriction of public demonstrations, limitation of activities of public organizations, persecution of defenders of human rights, cancellation of direct governors' elections and increased control over courts, which was evident in the 'Jukos' case and in the process against M.Chodorkovski and P.Lebedev;

/signature/

On the 18<sup>th</sup> November 2005 the Senate of the USA adopted Resolution No. 322 by which it expressed its belief that the cases of M.Chodorkovski and P.Lebedev bear political nature, they are imprisoned through infringement of the laws of the Russian Federation, regulating choice of imprisonment place, the Russian law authorities are under the direct control of the power.

In March 2005 London Bowstreet Magistrate Court of the United Kingdom overruled the appeals of the Russian Federation concerning extradition of 'Jukos' employees N.Cernysova and D.Marujev on the grounds that charges of appropriation of funds are circumscribed by the political persecution of M.Chodorkovski and related persons performed by the Russian authorities.

Resolution No. 1418 adopted by the Parliamentary Assembly of the European Council on the 25<sup>th</sup> January 2005 named a series of actual circumstances evidencing discriminative demeanour of Russian authorities with regard to persons accused in respect of 'Jukos' case, the arrested were kept in prison under control of Federal Security Council, but not of the Ministry of Justice, they did not received proper medical treatment, their right to communicate with the lawyers was infringed, the publicity of legal proceedings was limited without motivations, the hearing was biased with the protection of evidence given by the prosecuting party.

On the 23<sup>rd</sup> September 2005 the General Public Prosecutor's Office of the Russian Federation officially declared that it referred to the Ministry of Justice with the request to annul the status of lawyer to all defenders of M.Chodorkovski. As it is seen from information conveyed by the Russian mass media, by the initiative of Federal Tax Inspectorate powers of judge of Arbitral Court of Moscow V.Blizniec were suspended after she had adopted a few favourable decisions in respect of companies related to 'Jukos'.

*Referring to the second issue, the Judicial Board states that data collected in the material of the Migration Department confirm that: first, there exists objective relationship between oil concern 'Jukos', the management of which were tried in the case of M.Chodorkovski, and Stavropol branch office of 'Menatep Sankt Peterburg' bank, the director of which is I.Babenko; second, public opinion in the Russian Federation and official authorities relate I.Babenko with 'Jukos and M.Chodorkovski case'. This inference is substantiated by the following facts.*

Written evidence of the case represents that P.Lebedev adjudged on the 16<sup>th</sup> May 2005 together with M.Chodorkovski by Moscow Mieschanskij Region court was chairman of the Board of Directors of 'Menatep Sankt Peterburg' bank (the same, the Director of the branch office in Stavropol of which was I.Babenko). The court decision states that the tried persons are accused of having established for the

purposes of fraud and used fictitious legal persons under their control; the accounts of the said fictitious legal persons were opened by the direction of the accused in 'Menatep Sankt Peterburg' bank, transfers were being made to the accounts, 'Menatep Sankt Peterburg' bank was under the control of M.Chodorkovski, P.Lebedev and other 'members of the criminal group'.

Information given by the General Public Prosecutor's Office of the Russian Federation in the extradition case shows that criminal case against I.Babenko and other persons was brought right after the judgement in the case of M.Chodorkovski – on the 25<sup>th</sup> May 2005, on the 9<sup>th</sup> June 2005 he was announced as wanted, on the 15<sup>th</sup> June 2005 arrest was inflicted.

Data collected through investigation of the Migration Department show that the Russian mass media names I.Babenko as 'M.Chodorkovski comrade' ('Utro.ru'), 'Participant in Jukos case' ('Vremia novostej'), regard the request of the General Public Prosecutor's Office of the Russian Federation of extradition of I.Babenko as one of 'extradition cases related to Jukos' ('Komersant'), I.Babenko is included in 'the list of persecuted persons in Jukos case' ('Press-centr Michaila Chodorkovskogo').

/signature/

***On the grounds of the whole abovementioned circumstances, the College of Judges makes the conclusion that the Migration Department reasonably recognized that the third interested party I.Babenko meets the juridical criteria of refugee status, since he feels completely well-founded fear of being persecuted in the Russian Federation as a result of belonging to the group of the persons related with the oil concern Jukos and the case of Michail Chodorkovski".***

*Concerning "provisions of non-application"*

As it has already been mentioned earlier in this judgement, the Applicant contests the decision on the grant of asylum to I.Babenka on the grounds of the Article 88 paragraph 1 subparagraph 2 of the Law on the Legal Status of Aliens, i.e. she claims that there are *serious grounds* to believe that he committed a serious non-political crime before his arrival to the Republic of Lithuania.

The decision of the investigator of the Prosecutor General's Office of the Russian Federation of 10 June 2005 in the extradition case to bring I.Babenko to book shows that the charges have been filed against him: he is accused of misusing his official position as the manager of Stavropolis branch office of "Menatep Sankt-Peterburg" bank and joining the organized crime of O.Lijev and systematic performance of large-scale financial operations with the money and bills of exchange acquired in the known manner as well as large-scale embezzlement of the property entrusted to him.

The representative of the Applicant explained to the court of appellate jurisdiction that the Prosecutor General's Office of the Republic of Lithuania has not evaluated the validity of the charges filed against I.Babenko and reliability as well as sufficiency of evidence submitted by the Russian Federation, since the extradition proceedings is subject to the presumption of reliability of the authorities and evidence of applying parties.

The subject of the administrative case heard by the court of general competence is not the evaluation whether such position of the Applicant is correct in the extradition case. It shall be also noted that the validity of the decision of the Migration Department on the grant of asylum in this case is considered in accordance with the norms of law on refugees including those which prescribe the requirements on evaluation of the reliability and sufficiency of evidence.

The College of the Judges states that the evidence submitted by the Russian Federation together with the request of extradition does not constitute the *serious grounds* to believe that I.Babenko committed the alleged crimes against him. In the abovementioned decision where to bring I.Babenko to book, it is stated that the crimes committed while performing the financial bank operations, concluding the sham loan agreements, issuing sham indents of cash revenues, etc. The charges of such character may not be founded only on the evidence of witnesses or other defendants: their evidence shall be based on economic financial examinations or other information of the similar character. Such evidence has not been included in the material submitted by the Prosecutor General's of the Russian Federation.

The Loan Agreement No. PK-1-2004 submitted by the third interested party and the documents related with its performance shall be considered as the subject to the additional doubts about the validity of the charges filed against I.Babenko. The court of the first instance made the conclusion that this

agreement is illegal without any juridical or factual grounds, since the investigation of validity of this agreement exceeds the limits of competence of courts in the Republic of Lithuania.

*The College of Judges states on the ground of the abovementioned circumstances that the third interested party shall not be subject to the provision of the Article 88 paragraph 1 subparagraph 3 of the Law on the Legal Status of Aliens.*

***Therefore, with reference to the stated above, the conclusion may be drawn that the Migration Department reasonably granted the refugee status to the third interested party, I.Babenko by its decision of 30 January 2006 No. 15/6-5-12PR-12. This decision does not damage the interests of the state or society, therefore, there are no grounds to satisfy the request of the Prosecutor General's Office of the Republic of Lithuania.***

/signature/

The court of the first instance evaluated the factual circumstances of the case incorrectly and made the conclusions which are not in compliance with them, therefore, the judgement which is appealed shall be overturned and the new judgement which denies the request of the Applicant shall be determined.

Pursuant to the Article 140 paragraph 1 subparagraph 2 of the Law on the Proceedings of Administrative, the College of Judges

delivers the following judgement:

to satisfy the appeal of the third interested party.

To revoke the judgement of Vilnius Regional Administrative Court of 22 May 2006 and determine the new judgement. To deny the request of the Prosecutor General's Office of the Republic of Lithuania regarding revocation of the decision of the Migration Department under the Ministry of the Interior of the Republic of Lithuania No. 15/6-5-12PR-12 of 30 January 2006.

The judgement shall not be appealed

Judges

/signature/

Artūras Drigotas

/signature/

Sigita Rudenaite

/signature/

Edvardas Sinkevicius

/round seal: text is unreadable/

/signature/

*Translated into English by Rima Banytė being translator of the translation bureau UAB "Rasmera", aware of Article 235 of the Lithuanian Criminal Code.*

\_\_\_\_\_, \_\_\_\_\_, 2006. I, Jurgita Šukienė, Notary Public of the Vilnius District Notary Office No. 7, do hereby certify this to be a genuine signature of Rima Banytė subscribed in my presence.

Notary registry

Remuneration

Notary signature