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In defense of A.F. Borodin

APPEAL
(as per Art. 124 of the RF CCP)

On September 29, 2011, the head of the investigative group handling criminal case №89816 issued an order to indict A.F. Borodin as a defendant whereby he was charged with committing the crime contemplated in part 4, Art. 159 of the RF CC.

We will show below that charging A.F. Borodin with committing fraud is knowingly false, whereas the order to indict him as a defendant (subsequently, "the Indictment") is inconsistent with the provisions of part 4, Art. 7 and Art. 171 of the RF CCP. In particular, it fails to describe properly circumstances subject to proof due to the rules contained in paragraphs1-4, Art. 73 of the RF CCP, which significantly infringes on the right to defense and, therefore, evidences a violation of guarantees afforded A.F. Borodin [under] Art. 46 (part 1), Art. 48 (part 1) of the RF Constitution, Art. 11 of the RF CCP.

The charges brought are phrased as follows: «*A.F. Borodin's conduct constituted fraud, i.e. theft of others' property via deception and abuse of trust committed by a group of persons acting by previous collusion, by a person using his/her office, on a particularly large scale, i.e. the crime contemplated in part 4, Art. 159 of the CC of the Russian Federation* ».

The Indictment describes the alleged crime as follows: *"The theft scheme looked as follows: as per the criminal scheme, B.Yu. Shemiakin and S.V. Timonina initiated receipt of loan proceeds made available by the OJSC Bank of Moscow, whereas he (A.F. Borodin) and D.V. Akulinin used their administrative influence to ensure disbursement of loan proceeds. In the meantime, funds were*

intended for third parties". (page 2). Therefore, the investigators are aware that the reference is to certain conduct existing in the realm of civil law, *i.e.* conduct engaged in to benefit private interests and governed by the rules of private law.

1. **The order to indict A.F. Borodin as a defendant dated September 29, 2011 represents a legal fact of anti-Constitutional invasion of privacy by the investigation**

The RF Constitution differentiates such branches of law as civil, administrative, and criminal: it follows from the provisions of Art. 71 (paragraph «o»), 72 (paragraph «k»), as well as Art. 118 (part 2), and 126 that the said branches of law may not be commingled or substituted for one another. Accordingly, because criminal liability sanctions are the most severe among those listed, it is unjustifiable, from the constitutional perspective, to use criminal prosecution in a situation where it is possible and adequate to apply administrative or civil liability. In this sense, penal prohibition constitutes the so-called last argument (ultima ratio) in the legislator's and, therefore, law-enforcer's arsenal. Exactly this approach follows from the RF Constitutional Court's Determination №270-O dated 07.10.2003.

Art. 2 of the RF CC exhaustively defines its tasks and goals. To accomplish the same, the Code establishes grounds for and principles of criminal liability; determines what acts are recognized as crimes, and criminal law sanctions triggered by committing the same. That exhausts the subject-matter of criminal law. Criminal legislation does not set or solve any other goals, including goals of governing protected relations. As it establishes criminal liability for crimes against property, criminal law protects mainly civil rights, above all, the right to own property. In such conditions, penal justice qualifying legal civil law relationships as crimes constitutes legal absurdity and contradicts the principle of legality (Art. 3 of the RF CC), whereby the investigator may not recognize as a crime an act that is outside the scope of the Criminal Code.

In the meaning of the legal stance of the RF Constitutional Court, as expressed in its February 24, 2004 Determination N 3-P, judicial review is not intended to verify economic advisability of decisions made by economic actors who are independent in the area of business and have vast discretion, because, due to the risky nature of such activities, there exist objective limits as to the courts' ability to identify business miscalculations in such activities. Obviously, such constitutional and legal interpretation fully applies to pre-trial investigation as a stage of criminal justice.

When deciding the matter of instituting criminal cases against parties to civil law relationships, the State, as it acts through its law-enforcement agencies, does not have the right, in the absence of sufficient legal grounds (let alone in the interests of any persons or business entities with a stake in the outcome of the case, which frequently employ criminal law mechanisms for their own mercenary interests) to invade relationships between economic actors, thus undermining the very economic basis of the State.

The charges brought constitute an instance of just such invasion. Due to interference, by investigative authorities, in the area of civil law relationships, the ECHR (whose judgments are binding on our country due to Art. 15 of the Constitution and international treaties entered into by Russia) has repeatedly pointed out that such acts are inconsistent with Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Interference by the

State, as represented by its executive branch - investigative bodies, - in private affairs may lead to a violation of the principles sealed in that Convention. In the same spirit, in paragraphs 6 and 7 of the declaratory part of February 2, 1998 Determination №4-P, the RF Constitutional Court pointed out that unlawful invasion by executive bodies in the area of civil law or other relationships arising out of parties' consent was not to be tolerated.

The investigator's unlawful invasion of privacy presents in the Indictment and in attempts at evaluating civil law transactions by economic actors, let alone in terms of criminal law. An obvious departure from the jurisdiction, as well as the competence of the investigator, is, for example, constituted by statements that «*the extent of preparedness of the matter of lending to CJSC Premier Estate put on the agenda of the OJSC Bank of Moscow Credit Committee with a view to a decision being made was unacceptable and contained an unjustifiably high level of managerial risk*» (sic), whereas the loan agreement was made «*in the absence of economic advisability and sense*» (page 4).

In the absence of any grounds to declare the June 3, 2009 loan agreement between OJSC Bank of Moscow and CJSC Premier Estate or other transactions made in the course of its implementation defective from the civil law perspective, the Indictment repeatedly - yet no less groundlessly - states that authorized individuals performed legally significant acts for the purposes of «*lending the crime a semblance of civil law transactions*» (page 3), «*under the guise of engaging in a lawful economic activity*» (page 4), «*in order to disguise their criminal conduct*» (pages 7,8), «*continuing to imitate legitimate financial and economic activities, under the guise of entering into civil law agreements*» (page 8), «*for the purposes of disguising the crime committed, imitating performance of the obligations under the loan agreement*» (pages 10, 11), «*a number of illegal actions was committed in order to avoid responsibility for the act committed*» (page 10).

2. Description of acts referred to as criminal in the Indictment is inconsistent with the disposition of the alleged crime and evidences the absence of the event of the crime

As emphasized in the RF Constitution Court's Determination №1037-O-O dated July 2, 2009, the competence of a court of law examining a criminal case comprises the establishing of whether specifically «***acts related to the conclusion of civil law transactions***» meet the criteria of crime, not such transactions' possible defectiveness. Obviously, the same approach is fully applicable to the investigator's authority as well.

Art. 159 of the RF CC only provides for liability for an act that is committed intentionally and is intended to steal property, *i.e.* unlawful gratuitous taking and/or conversion of others' property for the benefit of the guilty person or other persons committed with mercenary purposes and inflicting damage on the owner or another holder of such property (note 1 to Art. 158 of the RF CC), or to acquire the right to others' property via deception or abuse of trust.

Under the rule set forth in part 1, Art. 14 of the RF CC, «*recognized as a crime shall be a socially dangerous act, committed by a guilty party and prohibited by this Code under the threat of punishment*». The Indictment describes A.F. Borodin's «criminal acts» as follows:

- "*…from December 2008 through December 29, 2009… entered into a criminal collusion … intended to steal pecuniary funds owned by OJSC Bank of Moscow"* (page 2),

- «*…he (A.F. Borodin) and D.V. Akulinin employed their administrative influence to ensure disbursement of loan proceeds*» (page 2),

- «*He (A.F. Borodin), acting as the organizer of a criminal scheme, by preliminary agreement, in the absence of economic advisability and sense, using his official position, in receipt of necessary information provided by president of CJSC KMD B.Yu. Shemiakin, abused the trust of Bank of Moscow shareholders who had trusted him to manage OJSC Bank of Moscow and used organizational and managerial functions in the lending institution by way of making a positive decision in the course of conducting, on June 3, 2009, a session of the OJSC Bank of Moscow Credit Committee… on the matter of extending a RUR 12,760,000,000 loan to CJSC Premier Estate*» (pages 3-4),

- «*He (A.F. Borodin) … groundlessly approved the necessity to reduce the lending rate for CJSC Premier Estate to 8.1% p.a.*» (pages 8-9),

- «*He (A.F. Borodin)… used the organizational and managerial functions in the lending institution by way of making a positive decision in the course of conducting, on October 11, 2010, a session of the OJSC Bank of Moscow Credit Committee, of which he (A.F. Borodin) was the chairman, on the matter of rescheduling repayment under Loan Agreement № 14-114/15/259-09-KR dated June 3, 2009 as made between OJSC Bank of Moscow and CJSC Premier Estate* (pages 9-10),

- «*…he (A.F. Borodin), jointly with unidentified individuals, arranged for partial repayment of the loan: RUR 34,000,000 on July 5, 2010, and RUR 10,000,000 on December 31, 2010*» (page 10),

- «*…he (A.F. Borodin), jointly with accomplices, arranged for wiring interest due for using the credit in the total amount of RUR 2,294,470,055.21*» (page 11).

Thus, the investigators believe that arranging for repayment of a loan and wiring interest constitute acts containing all the elements of *corpus delicti* provided for in the disposition of Art. 159 of the RF CC. That such statements are knowingly false is obvious. Such acts are not dangerous for the public and, for that reason alone, may not be viewed as criminal.

The situation involving other «acts» does not work any better. We will discuss below the process of «joining a criminal collusion», which took two years. Most of A.F. Borodin's acts specified in the Indictment and evaluated as containing *corpus delicti*, in the investigators' opinion, have to do with his performance of the functions of the head of the bank's credit committee. Therefore, it is from this circumstance that the investigators derive the qualifying attribute of fraud being committed using official status. In accordance with guidance provided by the RF Supreme Court's Plenary Session No. 19 on October 16, 2009, organizational and managerial functions refer to individuals' authority to make decisions that have legal meaning (passage 2 in paragraph 4). A similar conclusion is to be found in a review of supervisory practices of the Judicial Panel for Criminal Cases of the RF Supreme Court for the first six months of 2009, as approved by the RF Supreme Court Presidium in its resolution dated 11.25.2009. As follows from the judgment in a specific case cited in the review, the Judicial Panel set aside all judicial acts since they were based on the erroneous finding that a person sitting on a bank's credit committee possesses

administrative powers capable of giving rise to, changing or terminating legal relations. Therefore, the said approach is not based on law and runs counter to court practices.

Fraud is considered completed as of the moment when the culprit has become able to dispose of what was stolen or has come into possession of stolen property. The stolen pecuniary funds, viewed by the investigators as stolen, never came into A.F. Borodin's possession, nor was he able to dispose of the same. As a matter of fact, no such charges have been brought against A.F. Borodin. A description of A.F. Borodin's acts in the Indictment indicates that the investigators have yet to determine the moment of completion of the illegally inculpated crime: it refers to the signing date of the loan agreement, the date of wiring funds from the bank to the borrower's accounts, and - from the latter's accounts for the benefit of individuals, and to information about extending the loan agreement and changing its terms. However, this circumstance (identifying the moment of completion) is crucial. In its absence, no criminal event can be legally established, let alone the importance of that circumstance from the perspective of duration of the procedural periods, etc.

3. **The description of the method of committing the alleged crime is inconsistent with the objective aspects of fraud**

The method of committing fraud is deception or abuse of trust. The Indictment does not mention the notion of «deception» with regard to A.F. Borodin's acts. Therefore, A.F. Borodin is not alleged to have employed deception as a method to commit a crime.

The investigator mentions abuse of trust once in the following phrase: «*He (A.F. Borodin)…abused the trust of the OJSC Bank of Moscow shareholders who trusted him to manage OJSC Bank of Moscow*» (page 4).

Paragraph 3 of the RF Supreme Court's Plenary Session's Resolution №51 dated December 27, 2007 and entitled «On Court Practices In Cases Involving Fraud, Embezzlement, Misappropriation» clarified: «*In the case of fraud, abuse of trust consists in using, for mercenary purposes, a relationship of trust with the owners of property or with another person authorized to make a decision to turn over such property to third persons*». Obviously, bank shareholders are not the owners of the bank's property, nor are they "other persons" authorized to make decisions to dispose of the bank's property, including decisions to extend credit. Without going into the detail of the soundness of the statement on abuse of the shareholders' trust, we will only note that, even if it had taken place, such a method of committing a crime is not consistent with the one alleged, namely with fraud.. Therefore, **the investigator incorrectly applied criminal legislation, which provides an unconditional ground for setting aside the order being so appealed**.

4. **Lack of grounds for finding the loan agreement unlawful rules out the legality of the charges brought**

In its March 16, 1998 Resolution №9-P, the RF Constitutional Court stated a universally mandatory legal position whereby the law «***in advance, i.e. before an argument or another legal conflict arises***» predetermines jurisdiction of settling the same. Establishing the fact of a discrepancy between a civil law transaction made by legal entities and the requirements of a law or other legal instruments is, according to part 1, Art. 47, Art. 127 of the RF Constitution, and

Art. 27 of the RF CAP, the competence of an **Arbitrazh Court, not pretrial investigation authorities.**

The legal stance of the RF Constitutional Court consists in the fact that, while it sets forth responsibility for committing fraud, *i.e.* theft of others' property or acquisition of the right to others' property via deception or abuse of trust, Art. 159 of the RF CC, **does not provide for an opportunity of holding liable persons entering into lawful civil law transactions.** Under Art. 8 of the RF CC, grounds for criminal liability are provided by the commission of an act comprising all elements of *corpus delicti* contemplated by this Code. Therefore, while qualifying an act, including in accordance with Art. 159 of the RF CC, it is mandatory to establish both the subjective and objective attributes of a crime's *corpus delicti* (the RF Constitutional Court's Determination № 61-O-O dated 01.29.2009).

There may not be a partial violation of a legal rule in the realm of criminal law. Either a criminal law has been violated (the guilty person's acts contain all the elements of a crime) or it has not been violated (at least one element of *corpus delicti* is missing) — there is no third option. That is why only an act containing all the elements of *corpus delicti* may be found to be criminally unlawful. However, an act that does not contain at least one element of *corpus delicti*, obviously, can be tortious. For criminal law purposes, such an action would be legally neutral, although, from the perspective of other branches of law, it may still be unlawful (for instance, from the perspective of civil law).

Theft is an act prohibited by **criminal** legislation. The Prosecution's unfounded statements about "defectiveness" of the loan agreement have nothing to do whatsoever with the application of criminal legislation. For an act to be found (in our case, the conclusion of a loan agreement) unlawful at the moment of its commission, a direct reference is required to the legal rule that was broken, whereas, **the Indictment contains no such reference**. Thus, such an order may not constitute grounds for deciding the matter of criminal liability.

On November 18, 2004, a report delivered at the RF Supreme Court's Plenary Session №23 «On Court Practices in Cases Involving Illegal Enterprise and Legalization (Laundering) of Monetary Funds or Other Property" noted: «*As demonstrated by generalization of court practices, while establishing elements of crimes, it is necessary to take into account legislation in the area of civil, banking, tax, and other branches of law whose rules constitute an integral part of the criminal law legislation…»* (RF Supreme Court Newsletter № 1, 2005, page 1).

In the Indictment, the investigator displayed a diametrically opposite approach, which has caused a violation of the principles of unity and systemic linkage of law, as well as stability of conditions of economic activities derived from articles 8 (part 1) and 34 (part 1) of the RF Constitution and which constitutes grounds for ruling the charges illegal.

The legal stance of the RF Supreme Court consists in the fact that, **in the case of theft, unlawfulness, first and foremost, consists in the taking of property against the will of the owner** (paragraph 19 of the RF Supreme Court's Plenary Session's Resolution №51 «On Court Practices in Criminal Cases Involving Fraud, Misappropriation, and Embezzlement» of 12.27.2007).

Provision of a loan through the free will of the owner of monetary funds is a transaction and may not be qualified as theft, if the transaction is devoid of will defects. The will to enter into a transaction is considered free, as set forth in Art. 1 of the RF Civil Code, as long as no facts have been established, which the law identifies as grounds for invalidating a transaction (Articles 178, 179 of the RF Civil Code), which, as noted above, is only possible in the context of arbitrazh [business], not criminal proceedings.

It has been established in the case and is not contested by the Indictment, that the loan agreement was made based on the will of the owner, the Bank of Moscow. Conclusion and performance of an agreement in accordance with the owner's will **makes it impossible to recognize the said actions as unlawful and, therefore, criminal.**

5. On «gratuitousness» of the loan agreement and «damage» caused by its implementation

The notions of «*for a consideration*» and «*gratuitousness*» are defined in the civil, not criminal legislation (Art. 423 of the RF Civil Code), whereby gratuitousness assumes lack of payment or any consideration. A similar interpretation of gratuitousness is contained in the provisions of tax (part 2, Art. 248 of the RF Tax Code) and even criminal (Art. 104.1 of the RF CC) law. Because the law is commonly known and unequivocal, the statements made in the order so appealed with regard to theft, *i.e.* gratuitous taking of pecuniary funds and conversion thereof for the benefit of third persons based on a loan agreement are not based on law and are knowingly false.

Above all, the very substance of a loan agreement is incompatible with gratuitousness: «*Under a loan agreement, a bank or another lending institution (creditor) undertakes to provide funds (credit) to a borrower in an amount and on terms provided for in the agreement, while the borrower undertakes to repay the amount of funds so received and to pay interest thereon*» (paragraph 1, Art. 819 of the RF Civil Code).

In the meantime, the investigator does not question that the loan agreement was in fact made and implemented in accordance with its terms and was never contested by anyone.

Under such circumstances, what took place was a loan agreement for a consideration (a transaction), not gratuitous theft of pecuniary funds for anyone's benefit.

A requisite criminal result of fraud is direct damage in the form of reduced available assets of the victim, which is directly caused by a guilty person's acts. The Indictment does not use the term «damage» at all but merely discusses the amount of what was allegedly stolen (RUR 12,760,000,000, page 11), which the investigator estimates as particularly large.

The investigator's «shyness» about using, in this case, criminal case terminology is easily explained: by saying "damage" he would have had to indicate who the damage was inflicted upon, describe the nature of the damage, which would have inevitably caused the author to state that any credit issued by a bank that is not due for repayment or that has not been found defective by a court of law or by an arbitrazh court, inflicts damage on the lending institution. The investigator did not go as far as make such absurd statements, which however does not make the order legal in this part.

One of the superiors of the investigator who issued the Indictment, deputy head of the division of the Investigative Department of Russia's Interior Ministry P.G. Sychev wrote in an article published by the magazine *Criminal Trial* (№8 for 2011, pages 50-54): «*Qualifying an act under Art. 159 of the RF CC «Fraud» is only possible in a situation where the credit payment term has expired or if collateral has been disposed of illegally; that is, there are elements of theft*». In this case, both of these elements are missing. How the charges could have come about under such conditions is something that would have to be established in the course of investigating this appeal.

Thus, without referring, in the order, to damage inflicted by the alleged crime and without describing its mandatory attributes, the investigator himself deprived the charges of attributes of legality, soundness, and reasonableness. Therefore, the Indictment contradicts part 4, Art. 7 of the RF CCP.

In addition, the order contains contradictory information about the allegedly inflicted "damage", even though the word "damage" is never used: it says on page 6 that the total amount of funds provided by the Bank of Moscow stands at RUR 12,598,090,234.32, whereas theft, as noted above, was alleged in a noticeably larger (by RUR 162 million) amount. It is impossible to imagine this. The matter remains unclear of how to take into account, in determining the amount of so-called damage, funds repaid to the bank by way of partial repayment of the loan (RUR 44,000,000) and a significant interest payment (RUR 2,294,470,055.21, page 11).

6. On the motive of the allegedly committed fraud

The subjective aspect of this crime is characterized by direct intent and mercenary purpose.

Carrying on with his policy of unexplained failure to use criminal law terms, the investigator avoids the phrases "direct intent" and "mercenary purpose". Accordingly, no grounds are available to prove that A.F. Borodin had these components of the subjective aspect of the crime, which in itself evidences illegality of the order so appealed. The situation fails to be rescued by the groundless use of other terms: «criminal design» (pages 3,8,9), «criminal plan» (page 5), and «criminal intention» (page 7). If, for example, the «criminality» of A.F. Borodin's designs, plans, and intentions presented as his involvement in the repayment and servicing of the credit, which unambiguously follows from the order, then grounds for criminal liability for the crime thus inculpated, above all intent to steal, are absent in principle.

This conclusion is confirmed by circumstances established by the investigator and evidencing the absence of any mercenary purpose in A.F. Borodin. The order, with the utmost accuracy, specifies who, when and how much received from CJSC Premier Estate. This amount, with the same degree of accuracy, corresponds to the amount of funds received by CJSC Premier Estate from the Bank of Moscow. Therefore, A.F. Borodin's mercenary motive in the form of money obtained is nowhere to be found, whereas the order fails to even mention any other mercenary motives on his part.

If failure to comply with the provisions of the law regarding the need to establish a motive for a crime that is consistent with the disposition of the imputed article of the RF CC entails reversal of a judicial act (RF Supreme Court Presidium's Resolution of 07.03.2002, RF

Supreme Court Newsletter №11, page 6-7), it applies to the same extent to the order to indict a person as a defendant.

7. Illegal and knowingly false inculpation of the element of committing a crime in complicity

In the meaning of part 1, Art. 30 of the RF CC, previous collusion to commit a crime in itself constitutes preparation for a crime. Therefore, the legislator defined such a preliminary accord as a criminally punishable act that must be proven due to paragraph 1, 2, part 1, Art. 73, paragraph 4, part 2, Art. 171, paragraph 1, Art. 307 of the RF CCP. The Indictment groundlessly states the existence of this qualifying element of the inculpated crime; however, no substantiation is provided for this statement. In similar circumstances, the Judicial Panel for Criminal Cases of the RF Supreme Court excluded a similar reference from a verdict (Determination №69-D08-9 of 09.16.2009).

In the Indictment, the investigator, deliberately distorting the substance of the institution of complicity in a crime, without any grounds whatsoever, presents as complicity actions engaged in by individuals connected through joint work and performed by them in the context of legal corporate procedures involved in managing a major business. In other words, the investigator knowingly falsely applied the notion of complicity in crimes by previous concert joint acts by several persons aiming to exercise constitutionally guaranteed rights to free use, by anyone, of their ability and assets in the course of entrepreneurial activities (part 1, Art. 34), both alone and jointly with other people (part 2, Art. 35), to the inviolability of the right to private property (part 1, Art. 35 of the RF Constitution).

The absence in the Indictment of arguments, required by law at this stage of criminal proceedings and substantiating the investigation's theory that a crime was committed in complicity, evidences its illegality in this part as well. The legal stance of the RF Supreme Court consists in this regard in that «***coordinated nature of actions taken by accused persons may not provide sufficient grounds for finding that a crime was committed in complicity***» (see Review of the Practices of the RF Supreme Court for 2000, page 6).

A January 27, 1999 Resolution by the RF Supreme Court's Plenary Session (paragraph 10) indicated: «*Previous collusion to murder presumes an accord, in any format, between two or more persons, which took place before commencement of actions directly intended to commit the murder*». A similar position is confirmed in the Plenary Session's Resolution №29 "On Court Practices in Cases Involving Larceny, Robbery, Armed Robbery" dated 12.27.2002, as amended on 02.06.2007 (paragraph 9). Obviously, this approach must apply to any premeditated crimes.

As mentioned before, the Indictment asserts that A.F. Borodin entered into a criminal collusion with his first deputy between December 2008 and December 29, 2010. Given the alleged act, which occurred in June of 2009, it means that, in the investigator's opinion, they began "to collude" when the loan agreement did not even exist in the draft form and finished long after the loan agreement was entered into and after the bank's obligations were performed. In the meantime, the investigator fails to explain what is responsible for such a lengthy period of achieving "criminal collusion", one that is inconsistent with the language of the charges, where

and how it took place and the specifics of how it occurred. Nor it is known when and where A.F. Borodin «brought into» the collusion B.Yu. Shemiakin and "unidentified individuals", although the law and court practices require the Prosecution to provide accurate information about such circumstances (see, for instance, RF Supreme Court Newsletter, 2001, №7. Page 27).

Under this approach, the CEO of the bank, members of the bank's collective governing bodies that define the policies and issue binding instructions following a statutory procedure are being groundlessly declared a group of persons acting by previous concert, whereas, contrary to the law, complicity is being found in what in fact is the standard practice of conducting business, labor and office relationships, which means **falsification of the very concept of complicity.**

Therefore, the order to indict A.F. Borodin as a defendant contradicts the RF Constitution and the fundamental principles of criminal and other applicable branches of law:

- knowingly false declaration of the loan agreement as made between and by the Bank of Moscow and CJSC Premier Estate unlawful and gratuitous is a case of anti-Constitutional invasion of privacy and is inconsistent with the facts of the case;

- the objective aspect of the inculpated crime is inconsistent with the disposition of Art. 159 of the RF CC: even if it had taken place, abuse of trust of unspecified Bank of Moscow shareholders cannot be a method of committing fraud;

- the subjective aspect of the inculpated crime - description of the intent and mercenary purpose in the Indictment - is inconsistent with the disposition of Art. 159 of the RF CC;

- the qualifying elements as described in the Indictment - the use of official status, an especially large scale and preliminary collusion by a group of persons - are inconsistent with the rules laid down in the RF CC and with the court practices.

Therefore, the order to indict A.F. Borodin as a defendant is deliberately false, may not be viewed as a legal basis for his criminal prosecution and must be overruled.

In view of the above and being guided by Art. 124 of the RF CCP, we hereby kindly ask that:

The order to indict A.F. Borodin as a defendant is set aside as illegal and groundless and the criminal case is terminated.

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