

Submissions to the Committee of Ministers

Execution of the Judgment of the European Court of Human Rights of 31 July 2014

Yukos Oil Company v Russia

Just Satisfaction

1. These Submissions concern the judgment of the European Court of Human Rights (the Court) of 31 July 2014 in Yukos Oil Company v Russia (Application No 14902/04) (the Judgment) which became final on 16 December 2014. The supervision of the execution of the Judgment, which concerns just satisfaction, is the task of the Committee of Ministers under Article 46 of the European Convention on Human Rights (the Convention). The importance of the case has already been recognised by the fact that the Committee of Ministers has made it subject to enhanced supervision.
2. Under the terms of the Judgment the Court ordered that just satisfaction should be paid to the former shareholders in Yukos Oil Company (Yukos) at the date of its liquidation. Para 2 of the operative part of the Judgment provides:
 - ‘2. *Holds*, by five votes to two,
 - (a) that the respondent State is to pay the applicant company’s shareholders as they stood at the time of the company’s liquidation and, as the case may be, their legal successors and heirs EUR 1,866,104,634 (one billion, eight hundred sixty six million, one hundred and four thousand, six hundred thirty four euros), plus any tax that may be chargeable, in respect of pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that the respondent State must produce, in co-operation with the Committee of Ministers, within six months from the date on which this judgment becomes final, a comprehensive plan, including a binding time frame, for distribution of this award of just satisfaction;’
3. These Submissions are made by Hulley Enterprises Limited (Hulley) and Yukos Universal Limited (Universal) each of which is a former shareholder in Yukos.

4. At the date of Yukos' liquidation on 22 November 2007 Hulley held 1,090,043,968 Yukos shares and Universal held 50,340,995 Yukos shares. As a result, the shareholdings of Hulley (56.3%) and Universal (2.6%) represented approximately 58.9% of the issued shares in Yukos on that date.
5. It follows that Hulley and Universal together are entitled to a majority share in the award of just satisfaction made in the Judgment, amounting to approximately EUR 1.099 billion plus any tax which may be chargeable. By virtue of that entitlement they are both 'injured parties' and they can therefore make submissions to the Committee of Ministers pursuant to Rule 9(1) of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements (the Rules).
6. Hulley and Universal together make the present Submissions to the Committee of Ministers with regard to payment of the just satisfaction and the taking of individual measures in this case. The Submissions are made to assist the Committee of Ministers in the performance of its tasks under Article 46 of the Convention.
7. Reflecting the terms of the Judgment and of Article 46 of the Convention, the Submissions are in three parts, and address:
 - (a) The legal framework (the most relevant legal provisions are quoted in Appendix 1);
 - (b) The express terms of the Judgment; and
 - (c) The steps which are required now from the respondent Government (the Russian Federation).

Legal Framework

8. The central element of the legal framework is Article 46(2) of the Convention, which makes the Committee of Ministers responsible for supervising the execution of a final judgment. That supervision is a continuing obligation, to ensure that the High

Contracting Party (HCP) concerned meets its obligation under Article 46(1) of the Convention to abide by the judgment of the Court.

9. The continuing nature of the obligation to supervise is reflected in various aspects of the Rules. Rule 6(1) envisages a mandatory dialogue between the Committee and the HCP, whereby the Committee shall invite the HCP to inform it of the measures which are intended to be taken or have been taken in consequence of the judgment, in order to abide by it. Rule 6(2) requires the Committee to examine under (a) whether just satisfaction has been paid and under (b)(i) whether individual measures have been taken to ensure that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention.
10. That continuing character of the Committee's supervision is also clearly reflected in the terms of Rule 16, which permits the Committee to adopt interim resolutions, 'notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution.'
11. It follows that Article 46 and the Rules require the Committee to take an active and continuous role in supervising the execution of judgments and ensuring that HCPs meet their obligation to abide by the judgments to which they are parties. This continuous approach is a key feature of the Committee's new working methods introduced in 2011, particularly in enhanced supervision cases, such as this¹.

The express terms of the Judgment and the requirements which it imposes

12. The Judgment makes the largest award of just satisfaction in the Court's history. The sheer size of the award is not, however, an obstacle as such to the effective execution of the Judgment. Nevertheless, the size of the award does emphasise the necessity for clear, effective and transparent arrangements for its distribution to the injured parties who are entitled to it under the terms of the Judgment.

¹ See CM Rec (2010) 13 and DH-DD (2014)137 at page 123, para 26ff

13. No doubt for this reason, the operative part of the Judgment is unusually precise and prescriptive as to the obligations which it imposes for the payment of the award and the timetable for the implementation of those obligations:

- (a) First, the Judgment identifies the precise amount of the award of just satisfaction as a numerical amount. There can be no confusion about that figure. The award is made clear of any taxes which might be due; it is a figure net and clear of any deductions. The Judgment also expressly excludes any possibility that Yukos, or its shareholders, remained subject to any outstanding liabilities arising from the domestic proceedings. The Russian authorities had raised this possibility in their pleadings on just satisfaction, but the Judgment (at paragraph 42) expressly rejected it as a basis to reduce or alter the award.
- (b) Secondly, the recipients of the award of just satisfaction are a clearly defined class, namely Yukos' 'shareholders as they stood at the time of [Yukos'] liquidation'. The Judgment provides further clarification at paragraph 38 as to the means of identifying the relevant shareholders².
- (c) Thirdly, in paragraph 2(b) of the operative part, the Judgment specifies four criteria for the implementation of the award of just satisfaction to the members of that defined class. They are that:
 - i. The Russian authorities must produce a comprehensive plan for the distribution of the award; and
 - ii. The plan shall:
 - 1. Be produced in co-operation with the Committee of Ministers;
 - 2. Be produced within six months of the Judgement becoming final; and
 - 3. Include a binding timeframe for the distribution of the award to the injured parties.

14. The Judgment became final on 16 December 2014. The six month period within which the Russian authorities must produce the comprehensive distribution plan in

² '[T]he Court decides that the aforementioned amount should be paid by the respondent Government to the applicant company's shareholders and their legal successors and heirs, as the case may be, in proportion to their nominal participation in the company's stock. In order to facilitate the Government's task, the Court refers to the list of the applicant company's shareholders, as they stood at the time of the company's liquidation, which is held by ZAO VTB Registrator, the company which had held and ran the register of the applicant company.'

co-operation with the Committee, expires by 15 June 2015. This date is a mandatory obligation under the express terms of the Judgment. It imposes urgency. This is in marked distinction to the discretion usually left to a respondent government as to the timetable for executing a judgment of the Court. The Committee must respond accordingly.

15. These Submissions are therefore made in the practical context of the next two meetings of the Committee of Ministers DH Committee on the Execution of Judgments which will take place before that date, namely the 1222nd Meeting on 10 to 12 March 2015 and the 1230th Meeting on 9 to 11 June 2015. The next following 1236th Meeting will be held from 22 to 24 September 2015, more than three months after the expiry of the mandatory period within which the comprehensive distribution plan must have been agreed with the Committee and be in the course of implementation within a binding timeframe.

16. It follows that the Russian authorities are required to co-operate with the Committee over the preparation of the comprehensive distribution plan during the period of those next two forthcoming meetings. That represents a tight timetable within which the key elements of the Committee's supervision of the first stage of the execution of the Judgment, ie the elaboration of the distribution plan, are to be carried out.

The steps which are required of the Russian authorities

17. These Submissions set out the key features which the comprehensive distribution plan should address. Identifying these features now is essential so that the Committee is equipped to co-operate with the Russian authorities in achieving the timetable imposed by the Judgment. It would obviously be impossible for the Committee, or the Russian authorities, to fulfil their obligations were the Committee simply to wait until the six month period expires, without collaborating closely with the Russian authorities. In the unusual circumstances of this case, and given the strict timetable imposed by the Judgment, the Committee will need to consider the operation of Rule 16 and when during that six month period it may be desirable to adopt an Interim Resolution, 'to make suggestions with respect to the execution' of the Judgment.

18. In view of this timetable these Submissions seek to assist the Committee to identify immediately:

- (a) The key elements which the comprehensive distribution plan should contain;
- (b) The timetable for the Russian authorities' proposals to this effect, to ensure that they can be considered thoroughly by the Committee, so that the co-operation between the Committee and the Russian authorities can be effective, and
- (c) The mechanisms for resolving any differences of view in time for the timely adoption of the distribution plan, including if necessary, an Interim Resolution.

Key elements which the comprehensive distribution plan should contain

19. The Judgment has identified a significant part of the critical information which is required. The Judgment specifies the precise amount of the award, which is not subject to dispute or alteration. The Judgment also specifies that that precisely quantified award is to be paid *pro rata* to the shareholders in Yukos at the date of its liquidation (Shareholders on Liquidation) in proportion to their nominal participation in the company's stock. The Russian Government's attempt to challenge this conclusion, by seeking a reference to the Grand Chamber of the Court on the ground that the Shareholders on Liquidation could, or should, not benefit from just satisfaction in this case, was rejected on 16th December 2014 and that debate is closed.

20. Secondly, the identity of the Shareholders on Liquidation is not in doubt. They are identified in the Judgment at paragraph 38 of the Judgment. They are listed in the Register records which were submitted to the Court by the Russian Government itself in the course of the Court's examination of the claim to just satisfaction. Those details of the Shareholders on Liquidation are therefore readily available to the Russian authorities.

21. That information reveals three important aspects of the identity of the Shareholders on Liquidation which are relevant to the design of the necessary distribution plan. First,

the Shareholders on Liquidation are numerous. The Register records over 52,000 Shareholders on Liquidation, the majority of whom are natural persons, with addresses in Russia, each registered as owning a comparatively small number of Yukos shares. The requirement that the distribution plan should have a binding timetable for the actual payment of the award of just satisfaction should take account of the number of Shareholders on Liquidation and so the scale of the task of executing the Judgment by making the appropriate payment to each of these injured parties.

22. Secondly, a significant number of the Shareholders on Liquidation are registered through nominee companies. This includes all the larger shareholdings, including both Hulley's and Universal's shareholdings. All Hulley's shares were held by Trust Investment Bank OJSC as nominee for Hulley under ledger number 365228043. The same nominees held 47,252,197 shares for Universal under the same ledger number. The balance of 3,088,798 shares was held by UBS Nominees CJSC as nominees for Universal under ledger number 260925043.
23. It is necessary that the distribution plan contains appropriate arrangements for nominee shareholdings to be claimed in a transparent and effective manner, so that the award is distributed to the injured parties, ie the actual beneficial Yukos shareholders, in accordance with the operative part of the Judgement.
24. The third characteristic of the Shareholders on Liquidation is that as well as Hulley and Universal they include a significant number of other non-Russians. This reflects the international standing of Yukos before its liquidation. A significant proportion of the free shares in Yukos were held by foreign investors through a single nominee structure for the issue of American Depositary Receipts (ADRs)³. As a result, although there was a small number of foreign shareholders which held their Yukos shares directly, a significant number of foreign shareholders held their shares through a limited number of nominee companies. The details of each of these shareholders is set out on Appendix 2; Appendix 2 a lists the three largest foreign shareholders

³ In order indirectly to sell its shares on U.S. exchanges, Yukos entered into an agreement with Deutsche Bank Trust Company Americas (Deutsche Bank TCA) whereby for every four ordinary shares in Yukos which Yukos deposited with Deutsche Bank TCA, Deutsche Bank TCA would issue one ADR. That ADR could then be traded in the U.S.A. subject to approval from the U.S. Securities and Exchange Commission.

(Hulley, Universal and Veteran Petroleum Limited), each of whom held through nominees; Appendix 2 b lists those foreign shareholders who held Yukos shares directly; Appendix 2 c lists the remaining foreign shareholders who held Yukos shares through Russian nominee companies.

25. This material shows that the foreign shareholders who held their shares directly are from Cyprus, Germany and the United Kingdom and its Dependencies, while those foreign shareholders who held their shares through Russian nominee companies are from Austria, Cyprus, Denmark, Estonia, Finland, Luxembourg, Sweden, Switzerland, the United Kingdom and its Dependencies and the U.S.A..
26. Plainly, given the substantial interests involved, the distribution plan must ensure that adequate notice is given to the foreign shareholders to enable them to participate effectively in the distribution and to receive their entitlement under the award promptly.
27. One exceptional feature applies to Hulley and Universal. Each brought international arbitration proceedings under the Energy Charter Treaty, which resulted in separate, substantial, further awards arising from the effect of the actions of the Russian authorities on their investments in Yukos (the ECT Awards).
28. In their submissions to the Court seeking a reference of the Judgment to the Grand Chamber the Russian authorities submitted that the fact that Hulley and Universal are entitled to share in the award of just satisfaction under the Judgment and the fact that they also benefit from the ECT Awards could give rise to double recovery. The Grand Chamber Committee did not regard this issue as a ground to refer the Judgment to the Grand Chamber. The Russian authorities had also raised this point in response to Yukos' claim for just satisfaction, and the Court rejected it in the Judgment as irrelevant (paragraph 44).
29. Nevertheless, in order to put this point yet further beyond argument, Hulley and Universal affirm that, should they each actually receive free and clear the distribution to which they are entitled under the award of just satisfaction under the Judgment,

they will give credit for the value of that distribution in calculating the sums remaining due to them in the enforcement of the ECT Awards.

The timetable for the Russian authorities' proposals

30. The most important emphasis on the Judgment is that the distribution plan must be completed, in co-operation with the Committee of Ministers, within six months of the Judgment becoming final, that is, by 15 June 2015.
31. In the light of the significance of the key features of the distribution plan referred to above it is obvious that the Russian authorities must set out the basis for the distribution plan in sufficient time for it to be considered by the Committee of Ministers at their forthcoming 1222nd meeting on 10 to 12 March 2015. They should therefore be invited to do so immediately. Furthermore, that request must be specific and take account of the key features of the distribution plan identified in these Submissions.
32. The Committee of Ministers is therefore expressly requested to invite the Russian authorities to inform it, pursuant to Rule 9(3), of the measures which are intended to be taken in order to abide by the Judgments and specifically with its requirement that the comprehensive distribution plan shall be adopted in co-operation with the Committee of Ministers, including:
 - (a) On what date do the Russian authorities propose to submit a comprehensive distribution plan to the Committee of Ministers?
 - (b) Will the distribution plan:
 - i. Distribute the award to the Shareholders on Liquidation in proportion to their nominal participation in the company's stock (Judgment para 38)?; and
 - ii. Allow immediate distribution to those Shareholders on Liquidation as soon as they establish their entitlement by reference to the list of the applicant company's shareholders, as they stood at the time of the company's liquidation, held by ZAO VTB Registrator, without

awaiting the identification of all Shareholders on Liquidation, or their heirs or assigns as the case may be?

iii. Ensure that reasonable efforts are made to ensure that the beneficial owners of shareholdings which are held by nominees receive:

1. Notice of the distribution plan; and
2. Prompt distribution of their entitlement in proportion to their nominal participation in the company's stock?

(c) What will the time frame be for the completion of the distribution of the award?

(d) What if any Russian taxes will or may be chargeable on the award of EUR 1,866,104,634 or any part of it, before or after its conversion into Russian currency and how will any such taxes be calculated and when would they be payable?

(e) What if any deduction or set off will or could be applicable to the award of EUR 1,866,104,634 or any part of it, before or after its conversion into Russian currency?

33. The distribution of these Submissions to the Committee of Ministers in accordance with Rule 9(3) will enable individual national delegations to prepare for the substantive assessment of the key elements of the distribution plan which need to be identified and agreed between the Committee and the Russian authorities at the forthcoming 1222nd Meeting, so that the mandatory timetable in the Judgment can be complied with.

34. Critically, the Secretariat shall include the issue of the execution of the Judgment on the Agenda of the 1222nd Meeting and specifically include under this item the identification of the key elements of the distribution plan and the modalities for the distribution plan to be finalised in co-operation with the Committee of Ministers (as the Judgment stipulates) within the timetable imposed by the Court.

The mechanisms for resolving any differences

35. These Submissions recognise the exceptional terms of the Judgment and of the timetable which it imposes for the adoption of a 'comprehensive' distribution plan for

this award of just satisfaction. It may be noted that the Application which gave rise to the Judgment was lodged in April 2004, so that the Judgment was given more than ten years later. This fact, and the exceptional size of the award of just satisfaction, are both reasons which explain the urgency which the Court requires of the execution phase of the Judgment. That urgency is reiterated by the requirement imposed by the Judgment that the distribution plan should include ‘a binding time frame’ for its actual implementation, once it has been approved by the Committee of Ministers.

36. The unprecedented size of the award should not give rise to delay in its execution. It is a pure monetary award, of fixed quantum and with identified beneficiaries. Those are, however, issues for the future, ie the phase of the actual distribution of the award, once the distribution plan has been approved.
37. The Committee’s immediate concern is with its responsibility to ensure that the distribution plan is elaborated within the six month period and with the Committee’s co-operation.
38. Given the fact that there are only two available meetings of the Committee at which matters can be formally adopted, it is necessary for the Committee to consider even now how it can best respond to differences with the Russian authorities over the plan, should they arise. At this stage it can already be seen that the greatest risk is not disagreement over a substantive point, but rather the risk that the timetable for elaborating the distribution plan slips. However, the new expedient⁴ of utilising the intervening ordinary meetings of the Ministers’ Deputies to supplement the quarterly DH Committee meetings for the review of enhanced supervision cases may need to be invoked to ensure that the timetable is achieved.

Conclusion

39. These Submissions serve to emphasis the urgency of ensuring compliance with the Judgment. Its terms are unusual in stipulating with precision the basis upon which the prerequisites for the actual distribution of the award of just satisfaction are to be

⁴ See DH-DD (2014) 137 at page 123, para 26

elaborated and in assigning the task of approving those arrangements to the Committee of Ministers.

40. That is the essential first step in the supervision of the execution of the Judgment. It requires an immediate response from both the Russian authorities and from the Committee of Ministers itself to ensure compliance with Article 46 of the Convention and an effective basis for implementing the obligations which arise from the violations of the Convention which have been found in the Judgment.
41. The Committee of Ministers will be required to respond to the obligation to co-operate with the Russian authorities in the elaboration of the distribution plan in the light of the information received from those authorities in advance of the 1222nd Meeting in response to the questions raised in paragraph 32 above.
42. Should that information be inadequate for the basis for the distribution plan to be clearly established in advance of the 1222nd Meeting, the Committee of Ministers shall assist the Russian authorities by adopting an Interim Resolution, incorporating the questions raised in paragraph 32 above.
43. Hulley and Universal reserve their response to further developments arising from the Committee of Ministers' examination of the execution of the Judgment.

A handwritten signature in black ink, appearing to read "J. E. Hawker". The signature is fluid and cursive, with a large initial "J" and "H".

For Hulley and Universal, by their representative

Dated 16 February 2015

Appendix 1

Article 46 of the Convention and Rules 6, 9 and 16 of the Rules

ARTICLE 46

Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the committee.
4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.
5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

Rules

II. Supervision of the execution of judgments

Rule 6: Information to the Committee of Ministers on the execution of the Judgment

1. When, in a judgment transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, of the Convention, the Court has decided that there has been a violation of the Convention or its protocols and/or has awarded just satisfaction to the injured party under Article 41 of the Convention, the Committee shall invite the High Contracting Party concerned to inform it of the measures which the High Contracting Party has taken or intends to take in consequence of the judgment, having regard to its obligation to abide by it under Article 46, paragraph 1, of the Convention.
2. When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine:

- a. whether any just satisfaction awarded by the Court has been paid, including as the case may be, default interest; and
- b. if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether:
 - i. individual measures⁵ have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;
 - ii. general measures⁶ have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.

Rule 9: Communications to the Committee of Ministers

1. The Committee of Ministers shall consider any communication from the injured party with regard to payment of the just satisfaction or the taking of individual measures.
2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention.
3. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

IV. Resolutions

Rule 16: Interim resolutions

In the course of its supervision of the execution of a judgment or of the terms of a friendly settlement, the Committee of Ministers may adopt interim resolutions, notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution.

⁵ For instance, the striking out of an unjustified criminal conviction from the criminal records, the granting of a residence permit or the reopening of impugned domestic proceedings (see on this latter point Recommendation Rec (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, adopted on 19 January 2000 at the 694th meeting of the Ministers' Deputies).

⁶ For instance, legislative or regulatory amendments, changes of case-law or administrative practice or publication of the Court's judgment in the language of the respondent state and its dissemination to the authorities concerned.