

## SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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Date: 07/10/2013

**DH-DD(2013)1019**

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1186 meeting (3-5 December 2013) (DH)

Item reference: Communication from the authorities (18/09/2013)

Communication from the United Kingdom concerning the case of CN against United Kingdom (Application No. 4239/08).

Information made available under Rule 8.2.a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1186 réunion (3-5 décembre 2013) (DH)

Référence du point : Communication des autorités

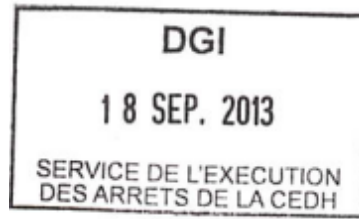
Communication du Royaume-Uni relative à l'affaire CN contre Royaume-Uni (Requête n° 4239/08)  
**(anglais uniquement).**

Informations mises à disposition en vertu de la Règle 8.2.a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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Ministry  
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18 September 2013

**CN v United Kingdom**

I write on behalf of the Government of the United Kingdom, further to your communication of the correspondence received from the representatives of the applicant in CN v United Kingdom, regarding the just satisfaction payment made by the Government.

As Bindmans, the representatives of CN have now contacted you directly (as we suggested to them), I thought it might be helpful if I explained further the underlying principles of our position on the just satisfaction payment in this case. This information was provided by the Ministry of Justice to Bindmans in email correspondence, all of which is attached to this letter.

The Government considers that we have paid in full the just satisfaction awarded by the European Court of Human Rights ("the Court") of EUR 8,000 in respect of non-pecuniary damage and EUR 20,000 in respect of the applicant's costs and expenses. Our rationale is as follows:

Firstly and referring to the guidance **CM/Inf/DH(2008)7 final**

(<https://wcd.coe.int/ViewDoc.jsp?id=1393941&Site=CM>) paragraph 119ter states:

"The question has thus been raised whether, in cases where the judgment does not provide any indication as to whether VAT is included or not in the award for costs and expenses, the use of the "global formula" entails automatically an obligation to pay the applicant, in addition, the VAT which could be due on the sums awarded for costs and expenses. Experience in the execution of these judgments has shown that in most cases no additional VAT is paid, nor claimed. The usual interpretation of these judgments is therefore that VAT is included in the amount awarded for costs and expenses".

This 2007 Secretariat document (referenced at footnote 137 of the guidance) <https://wcd.coe.int/ViewDoc.jsp?id=1113945&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383> suggests that the "global

formula" relates only to taxes not claimed before the Court during the proceedings, which is consistent with our reasoning.

The global formula referred to is the wording 'plus any tax that may be chargeable to the applicant' and this was used in the CN v United Kingdom judgment. The guidance therefore signals that, in the absence of any contrary indication by the Court, we can proceed on the basis that the applicant does not need to be reimbursed for VAT on the sum awarded for costs and expenses. This also reflects, as indicated by the guidance, the practice of the Committee of Ministers; UK cases such as J.M. v United Kingdom (CM/ResDH(2012)232) where the Court used the global formula in the absence of any express reference to VAT in the judgment, have been closed by the Committee of Ministers. In such cases, applicants were not reimbursed for VAT on the sums awarded for costs and expenses. The United Kingdom and other Member States of the Council of Europe following this established practice, have always interpreted this to mean that because the claims for their costs and expenses already included the amount for VAT then this has been fully reflected in the final award made by the Court.

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In the specific case of CN v United Kingdom, in the claim for just satisfaction (page 22 of the applicant's observations), the applicant sought an amount for costs and expenses inclusive of VAT (at 17.5%). Paragraph 93 of the judgment suggests that the Court awarded €20,000 in respect of everything sought. The Court was certainly aware of the VAT that had been claimed already.

Yours faithfully



**Laurence Fiddler**