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Date: 21/08/2013

DH-DD(2013)881

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Meeting:	1179 meeting (24-26 September 2013) (DH)
Item reference:	Communication from the applicant's representative (18/07/2013) in the case of C.N. against United Kingdom (Application No. 4239/08)

Information made available under 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.

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Réunion :	1179 réunion (24-26 septembre 2013) (DH)
Référence du point :	Communication de l'avocat du requérant (18/07/2013) dans l'affaire C.N. contre Royaume-Uni (Requête n° 4239/08) ***(anglais uniquement)***

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

BINDMANS LLP

Your ref: 4239/08
Our ref: GGM.51417.4
Date: 18 July 2013

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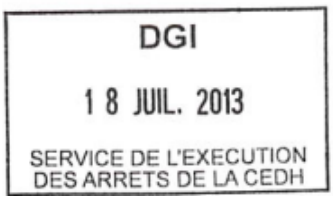
First by email



Dear Sirs

CN -v- UK
Case Ref: 4239/08

We write further to our email of 19 June 2013 in which we lodged a complaint regarding the execution of this judgment. In short, the Court has marked the just satisfaction as having been paid to the Applicant when in fact this is not yet the case. 20% tax (VAT) remains outstanding on the Applicant's legal costs. In order to assist the court in dealing with our complaint and by way of background to the case, we have set out the chronology below:

- On 13 November 2012 the European Court of Human Rights (the 'Court') passed judgment in favour of our client, the Applicant. In the judgment, the Court made an award in favour of our client under Article 41 of the Convention;;
- On 13 February 2013 the judgment became final;
- On 28 February 2013 we wrote to the UK's Ministry of Justice ('MoJ') to seek confirmation that the transfer of costs and damages had been effected and the relevant sums converted;
- On 4 March 2013 the MoJ wrote us stating that it was awaiting confirmation of any tax chargeable and on the same day we wrote to confirm that VAT was chargeable;
- On 12 March 2013 the MoJ wrote to us stating that no tax was chargeable to the payment according to the Court's ruling;
- On 21 March 2013 the MoJ confirmed payment of only €20,000 (without 20% VAT) to our client;
- Our client's damages of E8000 were transferred directly to her but her legal costs remain outstanding;
- On 22 March 2013 we wrote to the MoJ to bring its attention to the fact that VAT was required by the Court's ruling and therefore €4,000 remained outstanding at that point;

- On 10 May 2013 the MoJ wrote to us stating that the just satisfaction awarded by the Court had been paid in full and on the same day they reconfirmed their position rejecting our submissions in relation to the determinative paragraph 94 of the judgment;
- On 29 May 2013 we wrote to the MoJ explaining why VAT was payable in addition to the €20,000 awarded by the Court for costs and that interest of 3% would accrue on the outstanding VAT from 12 May;
- On 31 May and 19 June 2013 the MoJ wrote to us reiterating its position, despite our submissions to the contrary on 17 June 2013.
- On 19 June, we lodged our complaint with the Executions department.

It should be emphasised that this was a long running, complex case in a developing area, which the Government contested throughout, despite the strength of the arguments. We lodged costs submissions in September 2010, at which point legal costs stood at £32,575 plus VAT. The case only concluded over two years later, and yet further work has since been required due to the Respondent's approach. Thus, our real costs, including counsel's fees, are far in excess of the 20,000 Euros plus VAT which the court awarded. As Lord Hope said in the domestic courts here[1]:

> "It is one thing for solicitors who do a substantial amount of publicly funded work, and who have to fund the substantial overheads that sustaining a legal practice involves, to take the risk of being paid at lower rates if a publicly funded case turns out to be unsuccessful. It is quite another for them to be unable to recover remuneration at inter partes rates in the event that their case is successful. If that were to become the practice, their businesses would very soon become financially unsustainable. The system of public funding would be gravely disadvantaged in its turn, as it depends upon there being a pool of reputable solicitors who are willing to undertake this work."

The UK's position is that the sum awarded by the Court took into account the VAT claimed by our client in relation to legal costs. This position is clearly wrong, as illustrated by reference in the operative paragraph 94 of the Court's judgment that the UK pay our client legal costs "**plus** any tax that may be chargeable to the applicant, in respect of costs and expenses". As previously stated, the total which remains outstanding and owing to our client is €4,007.45 in tax, which is chargeable to our client and payable by the UK in relation to her costs.

Under paragraphs 118-119 of the Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights [Ref: CM/Inf/DH(2008)7] (the 'Memorandum'), the aim of using 'a "global formula" such that, where necessary, "any tax which may be chargeable" should be added to the just satisfaction' is to

[1] *R (on the application of E) (Respondent) v Governing Body of JFS and the Admissions Appeal Panel of JFS (Appellants) and others* [2009] UKSC 1

'ensure that the applicant obtains the real value of the just satisfaction'. The Memorandum also recognises the need for lawyers who take such long-running public interest cases to be remunerated so as to ensure an effective system of access to justice for individuals:

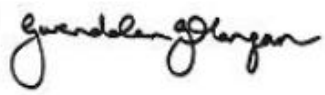
> "109. Certain respondent states have, however, agreed to protect the just satisfaction awarded in respect of costs and expenses against attachment, to ensure that counsel receives his or her remuneration, as this has been perceived as a means of maintaining the effectiveness of the right of individual petition"

It is clear that the court would have specified that VAT was inclusive had it meant this: it would not have clearly ordered the Respondent to pay costs "plus any tax that may be chargeable". (We should make clear that there has been no suggestion from the MoJ that the UK Government will not claim 20% VAT when annual tax returns are filed – one alternative envisaged as quid pro quo in the Memorandum.)

We consider that the UK's refusal to pay the tax owed to the UK by our client on legal costs denies her the just satisfaction which she deserves. Accordingly, the UK's position is in direct and continuing breach of the principle of the UK's unconditional obligation to pay an injured party in pursuance under the Convention (paragraphs 1-7 of the Memorandum) and the clear terms of the judgment.

Should you require any further information, please do not hesitate to contact us. We would be grateful if you would deal with our complaint as early as practicable. Thank you for your assistance in this matter.

Yours sincerely



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