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Contact: Clare Ovey
Tel: 03 88 41 36 45

Date: 25/02/2016

DH-DD(2016)217

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: 1250 meeting (8-10 March 2016) (DH)

Item reference: Communication from the applicant's representative (25/02/2016) in the case of OAO Neftyanaya Kompaniya Yukos against Russian Federation (Application No. 14902/04)

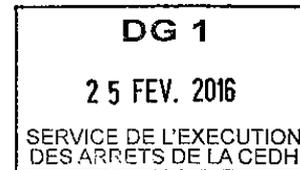
Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1250 réunion (8-10 mars 2016) (DH)

Référence du point : Communication du représentant du requérant dans l'affaire OAO Neftyanaya Kompaniya Yukos contre Fédération de Russie (Requête n° 14902/04) (**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.



1250th meeting of the CMDH¹

Non-compliance with the Yukos Oil Company v Russia judgment on Just Satisfaction

1. The judgment on just satisfaction of 31 July 2014 in Yukos Oil Company v Russia (the Yukos Judgment) became final on 16 December 2014. The execution of the judgment has been examined by the Committee of Ministers' CMDH in March and September 2015 and is on the Agenda of the 1250th CMDH meeting from 8 to 10 March 2016.
2. In the Yukos Judgment the Court ordered that just satisfaction of EUR 1,866,104,634 should be paid to the former shareholders in Yukos Oil Company (Yukos) at the date of its liquidation in October 2007². The Yukos Judgment also stipulated that by 15 June 2015 the respondent Government must produce, in co-operation with the Committee of Ministers, a comprehensive plan, including a binding timeframe, for the distribution of the 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 and an injured party under the Yukos Judgment. They are made under Rule 9 of the Rules of the CMDH. Hulley and Universal have awaited information from the respondent Government as to the steps taken in execution of the Yukos Judgment. These Submissions are made in the absence of any such information.
4. In reality, the respondent Government have done nothing to execute the Yukos Judgment which became final over a year ago. The CMDH must take steps at its forthcoming 1250th meeting to address this failure to comply with the Yukos Judgment.

¹ Agenda Item []

² Para 2 of the operative part of the Yukos 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;'

5. By letter of 16 June 2015 (the 16 June 2015 Letter) the Russian authorities informed the Department for the Execution of Judgments (DG I) under Rule 8 of the CMDH Rules that 'information on the further (sic) actions of the Russian authorities' on the execution of the Yukos Judgment could not be provided at that time as a result of a request made on 11 June 2015 for a ruling from the Russian Federal Constitutional Court (the Request) which was said to be 'determinative' for the execution of the Yukos Judgment. How, or why, the Request was, or might be, relevant to the execution of the Yukos Judgment, still less 'determinative', was not explained. The 16 June 2015 Letter stated further that: 'Upon the results of the Constitutional Court's consideration of [the Request], the CMCE will be communicated additionally'.
6. The Russian Federal Constitutional Court gave its decision on the Request on 14 July 2015 (the July Decision). The Request had raised the (abstract) question whether the Russian Federal Constitutional Court was competent to determine the constitutionality of measures for the enforcement of judgments of international courts and tribunals. The July Decision held that the Russian Federal Constitutional Court had such a competence.
7. Despite the terms of the second paragraph of the 16 June 2015 Letter, no further communication under Rule 8 has been made to DG I by the Russian authorities.

The Decisions of the CMDH to date and subsequent developments

8. The CMDH examined the execution of the Yukos Judgment at its meetings in March 2015 (the March Decision) and September 2015 (the September Decision). At the latter meeting the CMDH took the following decision:

'The Deputies

1. expressed serious concern that no plan has been submitted by the Russian authorities within the deadline set by the European Court in respect of the distribution of the just satisfaction awarded for pecuniary damage, as required by the present judgment;
2. consequently, strongly urged the Russian authorities to present the required plan without further delay;

3. further urged the Russian authorities to provide information on the payment of the just satisfaction awarded in respect of costs and expenses;

4. decided to resume consideration of this case at the latest at their DH meeting in March 2016.'

9. The developments since the September Decision have included the following:

(a) On 25 September 2015, the day following the publication of the September Decision, the Russian Ministry of Justice made a statement to the press asserting that:

'The Russian Justice Ministry is not developing any sort of plans to reimburse former Yukos shareholders ...

The Russian Justice Ministry's further actions in regard to the [Yukos Judgment] will be done on the basis of Russian legislative demands, the legal positions of the Russian Constitutional Court, and taking into consideration the necessity of upholding national interests.'

(b) On 23 October 2015 TASS reported the Russian Minister of Justice's statement to the press (the October 2015 Statement) as follows:

'Russia's Justice Ministry is ready to initiate an inquiry with the Constitutional Court over the interpretation of the ruling passed by the European Court of Human Rights (ECHR) on Yukos Oil Company, Justice Minister Alexander Kononov said on Thursday.

'I believe we can't do without this. We're ready to initiate this inquiry' he said.'

(c) On 14 December 2015 the President of Russia promulgated a law setting out the powers granted to the Government and to the Presidential Administration to refer to the Russian Federal Constitutional Court the question of the constitutionality of the enforcement of measures required by judgments of international courts and tribunals.

(d) On 2 February 2016 the Russian Ministry of Justice referred the constitutionality of the enforcement of the *Anchugov* and *Gladkov* judgment of

the European Court of Human Rights³ to the Russian Federal Constitutional Court.

- (e) On 3 February 2016 the Russian Ministry of Justice stated to the media (the February 2016 Statement): 'For the moment, the Justice Ministry is not preparing any similar [references to the Russian federal Constitutional Court in] any other cases considered by the European Court of Human Rights,' adding [according to TASS] that no inquiries have been made to the Constitutional Court on the ECtHR's ruling on a case brought by former YUKOS shareholders.

10. Throughout this period the Russian authorities have not made any submissions to the Committee of Ministers relating to the Yukos Judgment under Rule 8 of the Rules of the CMDH, whether by way of an action plan, action report, or any other communication.

What the Yukos Judgment requires of the Respondent Government and the CMDH

11. The operative part of the Yukos 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 Yukos 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 also expressly excludes any possibility that Yukos, or its shareholders, remained subject to any outstanding liabilities arising from the domestic proceedings⁴.

³ The judgment in these cases (No 11157/04 and No 15162/05), which became final on 9 December 2013, concerns the prohibition in the Russian Constitution on certain categories of prisoners voting in elections to the Duma

⁴ 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'⁵.
- (c) Thirdly, in paragraph 2(b) of the operative part, the Yukos 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 Yukos Judgement becoming final; and
 - 3. Include a binding timeframe for the distribution of the award to the injured parties.

12. The Judgment became final on 16 December 2014. The six month period within which the Russian authorities were required to produce the comprehensive distribution plan in co-operation with the Committee of Ministers expired on 15 June 2015. That date was a mandatory obligation under the Yukos Judgment. It has not been complied with.

The CMDH now needs to establish whether the respondent Government intend to comply with the Yukos Judgment

13. In the absence of compliance with the Yukos Judgment and of any explanation for the Russian authorities' lack of action, notwithstanding the March Decision and the clear terms of the September Decision, the CMDH requires the following information:
- (a) What is the relevance (if any) of the July Decision for the Russian authorities' compliance with the Yukos Judgment? How in particular, is the July Decision to be regarded as 'determinative' of the execution of the Yukos Judgment?

⁵ The means of identifying the relevant shareholders is set out in para 38 of the Yukos Judgment: '[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.'

- (b) In what respect (if any) is it considered by the Russian authorities that the execution of the Yukos Judgment may give rise to a question necessitating a reference to the Russian Federal Constitutional Court?
- (c) In respect of question (b) above, how are the October 2015 Statement and the February 2016 Statement to be reconciled? Notably:
 - i. In the October 2015 Statement the Minister of Justice stated that that the Ministry 'could not do without' a reference to the Constitutional Court in relation to the Yukos Judgment and that the Ministry was 'ready' to initiate such a reference, whereas
 - ii. In the February 2016 Statement, four months later, the Ministry stated that there were no plans to make a reference to the Constitutional Court in relation to the Yukos Judgment.
- (d) Will the respondent Government make proposals for a distribution plan, as required by the Yukos Judgment, notwithstanding the 16 June 2015 Letter?
- (e) If the answer to question (d) above is in the affirmative, when will those proposals be made, bearing in mind that:
 - i. the mandatory timetable for making those proposals, in co-operation with the Committee of Ministers, expired on 15 June 2015; and
 - ii. to date, some fourteen months after the Yukos Judgment became final, no distribution plan has been prepared and no distribution of the award of just satisfaction has been made at all.
- (f) If the answer to question (d) is in the negative, would the respondent Government be complying with the obligation to 'abide by' the Yukos Judgment within the meaning of Article 46 of the Convention?

14. The CMDH will set an appropriate timetable for the replies to these questions. In view of the delays to date and the timetable imposed by the Yukos Judgment itself, the relevant period should be brief.

15. In the light of the absence of any steps by the respondent Government to execute the Yukos Judgment more than eight months after the expiry of the time limit for the preparation of the distribution plan expressly specified in the Yukos Judgment, the issue of execution should be included on the Agenda of the CMDI at each of its forthcoming meetings until it can be resolved whether the respondent Government have complied

DH-DD(2016)217: Rule 9.1: applicant's representative in Yukos Oil Company v. Russian Federation.
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with the stipulations in Yukos Judgment for its execution, in accordance with Article 46 of the Convention.

For Hulley and Universal, by their representative

A handwritten signature in black ink, appearing to read 'P. Gardner', with a stylized initial 'P'.

Dated 24 February 2016

Piers Gardner

Monckton Chambers, Gray's Inn, London GB-WC1R 5NR