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OAO Neftyanaya Kompaniya YUKOS v. Russian Federation (no. 14902/04)

Executive summary of the authorities' action plan on general measures of May 2013

Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights

The opinions expressed in this document are binding on neither the Committee of Ministers nor the European Court

This document entails an executive summary (without an assessment) of the action plan submitted by the Russian authorities on 15 May 2013 (see [DH-DD\(2013\)565](#)) in response to the European Court's judgment on the merits delivered on 20 September 2011 in the case of *OAO Neftyanaya Kompaniya YUKOS v. Russian Federation* (no. 14902/04).

Summary of the general measures as indicated by the Russian authorities

Introduction

The judgment was translated, published and disseminated, as well as included in training programmes for judges, commercial courts' officials and bailiffs. The authorities further indicated that a number of legislative and practical measures were adopted to prevent similar violations in the future, as follows:

Prevention of future similar violations

a) Time allowed for the preparation of one's defence in tax-assessment proceedings

The Code of Commercial Procedure was amended in 2009 and again in 2010, increasing notably the time-limits for the case examination by commercial courts from 1 to 3 months at first instance and from 1 to 2 months at appeal instance (see Articles 152 and 267) (which means that courts now have the possibility to grant more time for the preparation of one's defence). Furthermore, the time-limits can now be extended up to 6 months for especially complicated cases and involving a considerable number of parties. In addition, the Plenum of the Supreme Commercial Court clarified in its ruling no. 36 of 28 May 2009 (as amended by its ruling no. 30 of 24 March 2011) that the date of the court hearing cannot be scheduled before the expiration of the time-limit for lodging appeals.

b) Time-limit for liability for tax offences

As regards the running of the time-limit for liability for tax offences, the new case-law of the Constitutional Court, whose retroactive application led to a finding of a violation in the present case,

was incorporated into the Tax Code by way of its amendment in July 2006 (Article 113, in force since January 2007).

c) Global conduct of enforcement proceedings, including proportionality and pace of enforcement actions taken by bailiffs

A Federal Law on Enforcement Proceedings was adopted in 2007, replacing the old one from 1997. The law provides for the inviolability of the minimal property necessary for a debtor's effective functioning, as well as for the proportionality between the amount of a creditor's claims and compulsory enforcement measures. On this latter point, the authorities referred to Chapter 10 of the new law, without providing further details.

In addition, the authorities also submitted information on the on-going legislative work with a view to introducing electronic auctions for selling property in the framework of bankruptcy proceedings.

d) Imposition of a fixed 7% enforcement fee

The Federal Law on Enforcement Proceedings (see above) provides for the following regulative framework governing the issue of the 7% enforcement fee: According to part 7 of Article 112, courts can order to delay the recovery of the enforcement fee or to recover it in instalments or to reduce its amount, depending on the gravity of the debtor's fault for not complying with the payment order in due time, the debtor's financial situation and other important circumstances.

With a view to ensuring a uniform practice, the Federal Bailiffs Service ("FSSP") issued methodical recommendations no. 01-8 of 23 December 2010 "On the procedure of recovery of the enforcement fee". These recommendations explain the grounds and conditions for taking a decision to recover the enforcement fee, the specificities of calculating the fee and the enforcement of the relevant decisions.

The authorities also provided a number of relevant examples of recent practice by domestic courts, as developed since the entry into force of the new provisions in 2007. The examples provided date from 2009 to 2013 and cover both first and second instance courts in several different regions of the Russian Federation, including the Moscow City Commercial Court.

e) Remedies

Judicial remedies: Actions or omissions by bailiffs can be appealed against to courts which have the possibility to order provisional measures, such as the suspension of the disputed decision, and to grant compensation for damage caused by unlawful actions or omissions by bailiffs. The authorities provided several examples in which such appeals to courts were successful during 2011 to 2013. In order to improve the domestic courts' practice in this area, the Presidium of the Supreme Commercial Court issued a "Review" of the relevant judicial practice on 31 May 2011.

Other remedies: Complaints about actions or omissions by bailiffs can also be addressed to their hierarchy who have the right to quash or amend decisions taken by lower officials. In 2011-2012, the Federal Bailiffs' Service ("FSSP") issued several instructions and circular letters aimed at improving the efficiency of the bailiffs' work. In this context, mention was made notably of Order no. 617 issued by the FSSP on 23 December 2011 concerning the departmental control over bailiffs' actions, according to which enforcement proceedings against legal entities exceeding 100 million Roubles are under the control of the Chief Bailiff of the Russian Federation who receives monthly reports (there were 31 such proceedings in 2012). Further mentioned was the FSSP's methodical recommendations no. 01-14 of 29 September 2011 concerning the handling of complaints against actions or omissions by bailiffs. The authorities also indicated that in 2012, the amount of complaints submitted to the central office of the FSSP was reduced by 21% as compared to the previous year (i.e. 1300 complaints in 2012 against 1700 complaints in 2011).

Lastly, the authorities indicated that prosecutors carry out the supervision of the bailiffs' work as regards their compliance with the law. In 2012 for example, over 3000 bailiffs were brought to disciplinary responsibility, while 95 were held administratively and another 300 criminally liable.