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Contact: Clare Ovey
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Date: 04/05/2016

DH-DD(2016)569

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: 1259 meeting (7-9 June 2016) (DH)
Item reference: Communication from the applicants' representative (27/04/2016) in the case of Khodorkovskiy and Lebedev against Russian Federation (Application No. 11082/06)

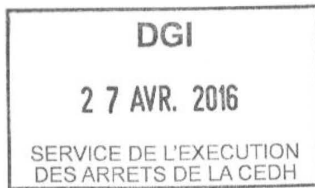
Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1259 réunion (7-9 juin 2016) (DH)
Référence du point : Communication du représentant des requérants dans l'affaire Khodorkovskiy et Lebedev contre Fédération de Russie (Requête n° 11082/06) (**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.

DH-DD(2016)569: 9.1 Applicants' representative in Khodorkovskiy & Lebedev v. Russian Federation.
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BY EMAIL, FAX AND COURIER

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Reference: DG1/GM/OD/VK/EMA/lma

27 April 2016

Khodorkovskiy and Lebedev (no.2) v Russia, nos. 13772/05 and 11082/06
Judgment 25 June 2013, final 25 October 2013

Dear Ms Kotek

Please find enclosed a copy of a letter dated 5 April 2016 to the RF Representative to the European Court of Human Rights regarding the continuing failure of the Government of the Russian Federation to pay Mr Khodorkovskiy the non-pecuniary damages awarded to him by the Court and the RF Government's apparent attempts to mislead the Committee of Ministers.

In their November 2015 submission to the Committee of Ministers, the applicants drew attention to the misleading statement by the RF Government in its September 2014 Information Note to the Committee.¹ At §1 of the Information Note the Government had asserted *"In view of the above violations the Court awarded M.B. Khodorkovsky non-pecuniary damages in the amount of EUR 10,000. Payment has not been effected, as the applicants have not furnished necessary documents."*

In fact, the correct position is as follows:

- (a) Mr Khodorkovskiy has repeatedly asked for the award of non-pecuniary damages to be paid to a charity.

¹ DH-DD(2014)1173, published by the Committee of Ministers on 7 October 2014



- (b) Mr Khodorkovskiy's lawyers first made this request in a letter dated 21 March 2014. The Government of the Russian Federation claimed that they did not receive a copy of the letter (even though there is fax confirmation that it was in fact received).
- (c) Mr Khodorkovskiy's lawyers made a further request for payment on 19 September 2014. The RF Government responded to that request by refusing payment on the purported basis that they had not received a certified copy of the signed power of authority by Mr Khodorkovskiy (the original having been filed with the Court, as the RF Government well knew). There is no requirement under the Convention for a certified copy to be provided.
- (d) Mr Khodorkovskiy's lawyers made a yet further request for payment to be made by way of a letter dated 3 November 2015. The letter was sent by courier who secured a receipt for safe delivery (so as to avoid a further argument as to whether the request had been received) and the original of Mr Khodorkovskiy's signed Power of Authority for the damages award to be paid to the Podmoskovny Lyceum. That Power of Authority was notarised by a Notary Public and certified by way of an Apostille by H.M. Principal Secretary of State for Foreign and Commonwealth Affairs in accordance with the Hague Convention 1961 (so as to avoid a further dispute as to whether the authority was acceptable to the Government).

On 15 December 2015, the First Deputy Head of the Office of the Representative of the Russian Federation at the European Court of Human Rights wrote to Mr Khodorkovskiy's lawyer stating that the *"payment of the ...compensation was organised. However, according to the special department of the Ministry of Justice of the Russian Federation it is impossible to perform the payment due to prohibition imposed by the order of 8 August 2014 (as amended by the order of 20 August 2014)"*. This was the first time in the very protracted correspondence regarding the Government's failure to pay Mr Khodorkovskiy the damages that the Government has referred to these orders. It is to be noted that Mr Khodorkovskiy has never received copies of the orders that are referred to in the letter.² Moreover, the RF Government offered no explanation as to why the orders permit the Government to refuse to comply with the unequivocal terms of the judgment of the Court.

It is notable that the Government of the Russian Federation made no mention of these orders in its 22 September 2014 Information Note – drafted over a month after the orders that are now said to prevent payment of the award. Nor did the Government mention them in any of the protracted correspondence where the Government sought to justify the non-payment of the award. After two years of challenging the validity of documents tendered and of alleging that documents had not been received or were in the incorrect form, it seems that the Government has now brought forward another purported reason to refuse to pay the award

² The applicants have asked the Government to provide copies of the orders as well as a full explanation as to why the orders prohibit the payment of the non-pecuniary damages but no reply has yet been received.

DH-DD(2016)569: 9.1 Applicants' representative in Khodorkovskiy & Lebedev v. Russian Federation.
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of damages. It seems quite clear that the Government is determined to ignore the judgment of the Court.

I would be grateful if this letter and the enclosed correspondence could be brought to the attention of the Committee of Ministers pursuant to Rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

Yours sincerely



JONATHAN GLASSON QC

On his own behalf and on behalf of the other duly appointed lawyers for Mr Khodorkovskiy and Mr Lebedev

Anton V. Drel
Corbiere Private Office Ltd
16 Hanover Square
London W1S 1HT

BY COURIER

Mr Matyushkin
Representative of the Russian Federation to the European Court of Human Rights
Ministry of Justice
14 Zhitnaya Street
Moscow 119991
Russian Federation

5 April 2016

Applications 11082/06 and 13772/05
Khodorkovskiy and Lebedev (no.2) v Russia, 25 June 2013, final 25 October 2013

Dear Mr Matyushkin

Thank you for your letter dated 15 December 2015 (posted 23 December 2015 and not received until 18 January 2016) regarding the continuing failure of the Government of the Russian Federation to pay the award of just satisfaction to Mr Khodorkovskiy in accordance with the judgment, referred to above, of the European Court of Human Rights.

In your letter you state that the “*payment of the ...compensation was organised. However, according to the special department of the Ministry of Justice of the Russian Federation it is impossible to perform the payment due to prohibition imposed by the order of 8 August 2014 (as amended by the order of 20 August 2014)*”.

This is the first time in the very protracted correspondence regarding the Government’s failure to pay Mr Khodorkovskiy the damages that the Government has referred to these orders. Mr Khodorkovskiy has never received copies of the orders that you refer to in your letter. Moreover, I note that the Government of the Russian Federation made no mention of these orders in its Information Note submitted to the Department for the Execution of Judgments of the European Court of Human Rights dated 22 September 2014¹ – i.e. over a month after the orders that you now say prevent payment of the award. In the Information Note the Government say “*Payment has not been effected, as the applicants have not furnished necessary documents*” – a statement that was patently untrue in any event as the appropriate documents had been submitted.

In fact, as is well known to the Government, Mr Khodorkovskiy has made repeated requests for the damages to be paid to a nominated charity, the Podmoskovny Lyceum:

- (a) Mr Khodorkovskiy’s lawyers first made this request in a letter dated 21 March 2014. The Government of the Russian Federation claimed that they did not receive a copy of the letter (even though we have fax confirmation that it was in fact received);

¹ DH-DD(2014)1173, published by the Committee of Ministers on 7 October 2014

DH-DD(2016)569: 9.1 Applicants' representative in Khodorkovskiy & Lebedev v. Russian Federation.
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. / Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

- (b) Mr Khodorkovskiy's lawyers made a further request for payment on 19 September 2014;
- (c) The RF Government responded on 17 October 2014 by refusing payment on the purported basis that they had not received a certified copy of the signed power of authority by Mr Khodorkovskiy (the original having been filed with Mr Nielsen at the Court, as the RF Government well knew). There is no requirement under the Convention for a certified copy to be provided and was a yet further indication of the Government's refusal to give effect to this judgment. Critically no mention was made of the bailiff orders that are now said to prohibit payment; and
- (d) On 3 November 2015 I submitted to you the original of Mr Khodorkovskiy's signed Power of Authority for the damages award to be paid to the Podmoskovny Lyceum. That Power of Authority had been notarised by a Notary Public and certified by way of an Apostille by H.M. Principal Secretary of State for Foreign and Commonwealth Affairs in accordance with the Hague Convention 1961.

After two years of challenging the validity of documents tendered and of alleging that documents had not been received or were in the incorrect form, it seems that the Government has now brought forward another purported reason to refuse to pay the award of damages. It seems quite clear that the Government is determined to ignore the unequivocal terms of the judgment of the European Court of Human Rights.

I would be grateful if you could send to me, as a matter of urgency:

- a) Copies of the order of 8 August 2014 and the order of 20 August 2014; and
- b) A full explanation as to why the Government consider that those orders permit the Government to refuse to comply with the unequivocal terms of the judgment of the European Court of Human Rights.

Copies of this letter are being sent to Mme Geneviève Mayer, the Head of the Department for the Execution of Judgments of the European Court of Human Rights at the Council of Europe and to Mr Nielsen, the Section Registrar at the European Court of Human Rights.

Yours sincerely


Mr Anton Drel

Appointed to act in the European Court of Human Rights for Mr Khodorkovskiy under a duly executed Power of Attorney