

OAo Neftyanaya Kompaniya Yukos v Russia

Execution of the Judgment on Just Satisfaction of 31 July 2014

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The award of Just Satisfaction

1. The judgment on just satisfaction of 31 July 2014 in OAO Neftyanaya Kompaniya Yukos (Yukos) v Russia (the Judgment) became final on 16 December 2014. The Judgment awards just satisfaction of EUR 1,866,104,634 to all the former shareholders in Yukos. Each is to receive part of the award in proportion to their holding of Yukos shares on the date when Yukos was dissolved; 1 share = €0.9644.
2. The Judgment stipulates specific steps for its execution. It imposes a six month time limit from the date when it became final, ie by June 2015, by which date the respondent Government:

‘must produce, in co-operation with the Committee of Ministers, ... a comprehensive plan, including a binding time frame, for distribution of this award of just satisfaction.’
3. Payment of the award of just satisfaction under the Judgment is a binding, immediate and unconditional obligation.
4. To date, no steps have been taken to execute the Judgment.

The Committee of Ministers’ Decisions to date²

5. The CMDH has examined the case on six occasions and repeatedly noted the absence of the distribution plan stipulated in the Judgment, as well as reaffirming the *unconditional obligation assumed by the Russian Federation under Article 46 of the Convention to abide by the judgments of the European Court, including to pay any just satisfaction awarded by it.*
6. On 19 January 2017 the Russian Constitutional Court ruled on a reference made by the Russian Ministry of Justice (the RF Constitutional Court Judgment) that execution of the Judgment is incompatible with the Russian Constitution.

A new co-operative initiative is needed

7. Three years after the Judgment became final³ the Committee of Ministers needs a new approach. The substance of the obligation under the Judgment is straightforward: the payment of money to the Yukos shareholders in proportion to the number of shares each held.
8. The large total number of shareholders led the Court to stipulate a Distribution Plan, but that Plan was to be elaborated quickly, not be a cause of delay. The payment of just satisfaction is an immediate, binding and unconditional obligation.
9. Crucially, the Judgment stated that preparing the Distribution Plan should involve **co-operation** between the Committee of Ministers and the respondent Government. The

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² The texts of the Committee of Ministers’ Decisions on this case are in the Appendix

³ And over six years since the judgment on the merits of 21 September 2011 (final 8 March 2012)

Committee of Ministers needs to develop its own familiarity with what a Distribution Plan requires so that it is equipped to assess and approve a workable and effective Plan.

10. The Judgment requires the Committee of Ministers, as well as the respondent Government, to meet its responsibilities in securing the preparation of a practical Distribution Plan. The Committee of Ministers needs to consider issues such as:
 - (a) What should a suitable Distribution Plan contain?
 - (b) Who are the shareholders in Yukos who are entitled to the award?
 - (c) Is the shareholder register public or accessible?
 - (d) Has the award been publicised so that shareholders are aware of their entitlement?
 - (e) How long need the distribution take?
 - (f) How should the Distribution Plan be publicised?
11. These are essentially technical and practical issues about the Distribution Plan which would enable a framework for the execution of the Judgment to be prepared. The Committee of Ministers needs to consider these points so that it is equipped to evaluate a Distribution Plan. They should be approached in a co-operative way with the respondent Government in the interests of resolving the current delay in achieving the payment of the just satisfaction awarded and complying with the express, clear, terms of the Judgment.

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APPENDIX

Decision of the Committee of Ministers relating to the Judgment

Since the Judgment has become final the Committee of Ministers has decided as follows:

- a. On 9 March 2015:

‘invited the Russian authorities to take all necessary steps to abide by this deadline and to co-operate actively with the Secretariat in drawing up the action plan, as well as to regularly inform the Committee of the progress made’;
- b. On 24 September 2015:
 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’

c. On 10 March 2016:

1. 'noted with regret *the prolonged absence of information concerning the distribution plan for the just satisfaction awarded in respect of pecuniary damage, as required by the Court's judgment*;
2. consequently reiterated their call upon the Russian Federation fully to co-operate and to continue its dialogue with the Committee of Ministers and the Secretariat with a view to executing the present judgment, in compliance with Article 46 of the Convention;
3. further reiterated their request to receive information on the payment of the just satisfaction awarded in respect of costs and expenses'

d. On 9 June 2016:

1. 'recalled their previous decisions *strongly urging the Russian authorities to present without further delay the distribution plan for the just satisfaction awarded in respect of pecuniary damage, as required by the Court in its judgment under Article 41*;
2. further recalled the unconditional obligation under Article 46 of the Convention to abide by the judgments of the European Court, including to pay the just satisfaction;
3. therefore firmly reiterated their call upon the Russian Federation to co-operate fully and to continue its dialogue with the Committee and the Secretariat with a view to executing the present judgment;
4. noted the information provided by the Russian authorities during the meeting and urged them to supplement it with precise explanations in writing, including on possible constitutional issues which the authorities believe they could face during the execution of this judgment'

e. On 9 December 2016:

1. 'noted with concern the information provided by the Russian authorities that, on 12 October 2016, the Ministry of Justice seized the Constitutional Court with a request concerning the possibility of executing the European Court's judgment on just satisfaction in the present case;
2. firmly *reiterated the unconditional obligation assumed by the Russian Federation under Article 46 of the Convention to abide by the judgments of the European Court, including to pay any just satisfaction awarded by it*;
3. further reiterated the call upon the Russian Federation to co-operate fully and to continue its dialogue with the Committee and the Secretariat with a view to executing the judgment in the present case;
4. requested the Russian authorities to provide the Committee with a translation of the request which they made to the Constitutional Court and a translation of the Constitutional Court's decision once it becomes available'

f. On 10 March 2017:

1. '*expressed serious concern at the non-implementation of the judgment of 31 July 2014 so far*;
2. noted the information provided by the Russian Federation on the present situation in the light of the judgment of the Constitutional Court of the Russian Federation of 19 January 2017;
3. firmly reiterated the unconditional obligation assumed by the Russian Federation under Article 46 of the Convention to abide by the judgments of the European Court;
4. urged the authorities to inform the Committee of Ministers about all relevant steps towards an appropriate solution;
5. further reiterated the call upon the Russian Federation to cooperate fully and to continue its dialogue with the Committee and the Secretariat and invited the Secretary General to provide all necessary assistance in that process'.