



Judgment on the question of just satisfaction in the Yukos v. Russia case

In a Chamber judgment in the case of [Oao Neftyanaya Kompaniya Yukos v. Russia](#) (application no. 14902/04), **adopted on 24 June 2014** and delivered today, which is not final¹, the European Court of Human Rights ruled on the question of the application of Article 41 (just satisfaction) of the European Convention on Human Rights.

The Court held, *by a majority*:

that Russia was to pay the shareholders of Yukos as they had stood at the time of the company's liquidation and, if applicable, their legal successors and heirs 1,866,104,634 euros (EUR) in respect of pecuniary damage; and,

that Russia had to produce, in co-operation with the Council of Europe's Committee of Ministers, within six months from the date on which the judgment became final, a comprehensive plan for distribution of the award of just satisfaction.

The Court further held, *by a majority*, that Russia was to pay EUR 300,000 in respect of costs and expenses to the Yukos International Foundation.

The Court also held, *unanimously*, that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Yukos.

Principal facts

The case concerned the tax and enforcement proceedings brought in 2004 against the Russian oil company, OAO Neftyanaya Kompaniya Yukos (Yukos), which eventually led to its liquidation in 2007.

In its Chamber judgment on the merits ([see press release](#)), delivered on 20 September 2011, the Court found a violation of Article 6 §§ 1 and 3 (b) (right to a fair trial) of the European Convention on Human Rights concerning the tax assessment proceedings for the year 2000 against Yukos, because it had had insufficient time to prepare its case before the lower courts. The Court also found violations of Article 1 of Protocol No. 1 to the Convention (protection of property). It held that: the assessment of the penalties relating to 2000 and the doubling of the penalties for 2001 had been unlawful; and that in the enforcement proceedings against Yukos the Russian authorities had failed to strike a fair balance between the legitimate aim of these proceedings and the measures employed – in particular by being inflexible regarding the pace of the proceedings and obliging Yukos to pay excessive fees.

Since the question of just satisfaction was not ready for decision at the time of the judgment on the merits, the Court reserved it and invited the Russian Government and Yukos to submit their written observations on that issue and to notify the Court of any agreement they might reach. Yukos and the Government each filed written observations on 13 June 2012. Both parties submitted further written

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

observations and then replied to each other's observations on 31 July 2012, 1 March and 15 May 2013.

Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 23 April 2004. Its Chamber judgment on the merits was delivered on 20 September 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Christos **Rozakis** (Greece), *President*,
 Dean **Spielmann** (Luxembourg),
 Nina **Vajić** (Croatia),
 Khanlar **Hajiyev** (Azerbaijan),
 Sverre Erik **Jebens** (Norway),
 Giorgio **Malinverni** (Switzerland), Judges, and,
 Andrey Yuryevich **Bushev** (Russia), *ad hoc Judge*,

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Application of Article 41 (just satisfaction award)

As regards the violation of Article 6 on account of the haste with which the Russian courts had conducted the 2000 tax proceedings against Yukos, the Court could not speculate as to what the outcome of these proceedings might have been had the violation of the Convention not occurred. It therefore found that there was insufficient proof of a causal link between the violation found and the pecuniary damage allegedly sustained by Yukos. There was accordingly no ground for an award in this respect.

The Court found, *by a majority*, that Yukos had sustained pecuniary damage as a result of the violations of Article 1 of Protocol No. 1:

Yukos had paid the penalties in the tax assessment for the years 2000 and 2001 which had been found unlawful by the Court, as well as a 7% enforcement fee on these penalties. The Court assessed the amount of pecuniary damage to Yukos resulting from those payments at EUR 1,299,324,198.

Furthermore, the disproportionate character of the enforcement proceedings had significantly contributed to Yukos' liquidation – even if the liquidation had not been caused by the shortcomings in those proceedings alone, as the company alleged. In its judgment on the merits the Court had found, in particular, that the 7% enforcement fees Yukos had had to pay for the years 2000 to 2003 had been completely out of proportion to the expenses which could have possibly been expected. The Court accepted an indication by the Russian Government, according to which an appropriate rate for the enforcement fee would have been 4%. The Court thus calculated the difference between an enforcement fee at that latter rate and the fee actually paid, and it deducted from that amount the fees for 2000 and 2001, which it had already found to be unlawful in their entirety. On that basis, the Court assessed the amount of pecuniary damage to Yukos resulting from the payments as a result of the disproportionate character of the enforcement proceedings at EUR 566,780,436.

The **overall pecuniary damage** therefore amounted to **EUR 1,866,104,634**.

Regard being had to the fact that Yukos had ceased to exist, the Court decided that this amount should be paid by the Russian Government to Yukos's shareholders and their legal successors and heirs, as the case might be, in proportion to their nominal participation in the company's stock.

The Court also held, *unanimously*, that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Yukos.

Finally, the Court held, *by a majority*, that Russia was to pay a lump sum of EUR 300,000 in respect of costs and expenses to the Yukos International Foundation, which had been created in the Netherlands by Yukos with a view to distributing to its shareholders any funds it would receive.

Separate opinions

Judge Jebens expressed a concurring opinion; Judge Bushev, joined in part by Judge Hajiyev, expressed a partly dissenting opinion. These separate opinions are annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.