EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 146 (2011)
20.09.2011

European Court finds Russia did not misuse legal proceedings to destroy YUKOS - but its human rights were violated

The European Court of Human Rights has today issued its Chamber judgment in the case OAO Neftyanaya Kompaniya YUKOS v. Russia (application no. 14902/04).

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

In its judgment, which is not final[1] and which does not deal with the question of the award of damages and costs, the Court held:

By six votes to one, that the case was admissible;

By six votes to one, that there had been a **violation of Article 6 §§ 1 and 3 (b) (right to a fair trial)** of the European Convention on Human Rights, concerning the 2000 tax assessment proceedings against YUKOS, because it had insufficient time to prepare its case before the lower courts;

By four votes to three, that there had been a **violation of Article 1 of Protocol No. 1 (protection of property)** to the Convention, concerning the 2000-2001 tax assessments, regarding the imposition and calculation of penalties;

Unanimously, that there had been **no violation of Article 1 of Protocol No. 1,** concerning the rest of the 2000-2003 tax assessments;

Unanimously, that there had been **no violation of Article 14 (prohibition of discrimination),** in conjunction with Article 1 of Protocol No. 1 concerning whether YUKOS had been treated differently from other companies;

By five votes to two, that there had been a **violation of Article 1 of Protocol No. 1,** in that the enforcement proceedings were disproportionate;

Unanimously, that there had been **no violation of Article 18** (limitation on use of restriction on rights), in conjunction with Article 1 of Protocol No. 1, concerning whether the Russian authorities had misused the legal proceedings to destroy YUKOS and seize its assets; and,

Unanimously, that the question of the application of Article 41 (just satisfaction) was not ready for decision.

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

Principal facts

The applicant, OAO Neftyanaya kompaniya YUKOS, (YUKOS), was an oil company and one of Russia's largest and most successful businesses. Registered in Nefteyugansk, in the Khanty-Mansi Autonomous Region of Russia, it was fully state-owned until 1995-6, when it was privatised.

In late 2002, YUKOS became the subject of a series of tax audits and tax proceedings, as a result of which it was found guilty of repeated tax fraud, in particular for using an illegal tax evasion scheme involving the creation of sham companies in 2000-2003.

On 15 April 2004 proceedings were started against YUKOS concerning the 2000 tax year and it was prevented from disposing of certain assets pending the outcome of the case. On 26 May 2004 Moscow City Commercial Court ordered it to pay a total of 99,375,110,548 roubles (RUB) (approximately 2,847,497,802 Euros (EUR)) in taxes, interest and penalties. Its judgment became available on 28 May 2004. YUKOS appealed and the appeal proceedings began on 18 June 2004. On 29 June 2004 the appeal court dismissed the company's complaints, including those about irregularities in the procedure and lack of time to prepare its defence.

On 7 July 2004 YUKOS filed an unsuccessful cassation appeal against the 26 May and 29 June 2004 judgments and simultaneously challenged those judgments by way of supervisory review before the Russian Supreme Commercial Court. YUKOS claimed, among other things, that the case against it was time-barred; according to Article 113 of the Russian Tax Code, a taxpayer was only liable to pay penalties for a tax offence for a period of three years, which ran from the day after the end of the relevant tax term.

The Presidium of the Supreme Commercial Court (Presidium) sought an opinion from the Consitutional Court, which confirmed, on 14 July 2005, that the three-year time limit under Article 113 should apply. However, where a taxpayer had impeded tax supervision and inspections, the running of the time-limit stopped once the tax audit report had been produced. On the basis of that ruling, on 4 October 2005 the Presidium dismissed YUKOS's appeal, finding that the case was not time-barred, because YUKOS had actively impeded the relevant tax inspections and the Tax Ministry's tax audit report for 2000 had been served on YUKOS on 29 December 2003, that was, within three years.

In April 2004 the Russian authorities also brought enforcement proceedings, as a result of which: YUKOS's assets located in Russia were attached, its domestic bank accounts partly frozen and the shares of its Russian subsidiaries seized.

On 2 September 2004 the Tax Ministry found YUKOS had used essentially the same tax arrangement in 2001 as in 2000. On the ground that it had recently been found guilty of a similar offence, the penalty imposed was doubled.

Overall: for the 2001 tax year, YUKOS was ordered to pay RUB 132,539,253,849.78 (approximately EUR 3,710,836,129); for 2002, RUB 192,537,006,448.58 (around EUR 4,344,549,434); and, for 2003, RUB 155,140,099,967.37 (around EUR 4,318,143,482).

YUKOS was also required to pay bailiffs an enforcement fee, calculated as 7% of the total debt, the payment of which could not be suspended or rescheduled.

It was required to pay all those amounts within very short deadlines and it made numerous unsuccessful requests to increase the time available to pay.

On 20 July 2004 the Ministry of Justice announced the forthcoming sale of OAO Yuganskneftegaz, YUKOS's main production (and therefore most valuable) subsidiary. On 19 December 2004, 76.79% of the shares in OAO Yuganskneftegaz were auctioned,

to cover YUKOS's tax liability. Two days earlier, bailiffs had calculated YUKOS's consolidated debt as RUB 344,222,156,424.22 (EUR 9,210,844,560.93).

YUKOS was declared insolvent on 4 August 2006 and liquidated on 12 November 2007.

Complaints, procedure and composition of the Court

The application was lodged with the Court on 23 April 2004 and declared partly admissible on 29 January 2009. A Chamber hearing in the case was held on Thursday 4 March 2010.

YUKOS complained of irregularities in the proceedings concerning its tax liability for the 2000 tax year and about the unlawfulness and lack of proportionality of the 2000-2003 tax assessments and their subsequent enforcement. It maintained that the enforcement of its tax liability had been deliberately orchestrated to prevent it from repaying its debts; in particular, the seizure of its assets pending litigation had prevented it from repaying the debt. It also complained about: the 7% enforcement fee; the short time-limit for voluntary compliance with the 2000-2003 tax assessments; and, the forced sale of OAO Yuganskneftegaz. YUKOS further argued that the courts' interpretation of the relevant laws had been selective and unique, since many other Russian companies had also used domestic tax havens. It submitted that the authorities had tolerated and even endorsed the "tax optimisation" techniques it had used. It further argued that the legislative framework had allowed it to use such techniques.

YUKOS relied on Article 6, Article 1 of Protocol No. 1 and Articles 1 (obligation to respect human rights), 13 (right to an effective remedy), 14, 18 and 7 (no punishment without law).

Under Article 41, YUKOS claimed: EUR 81 billion and a daily interest payment of EUR 29,577,848 for pecuniary damage, "no less than 100,000 euros" for non-pecuniary damage and EUR 171,444.60 for costs and expenses.

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

Christos **Rozakis** (Greece), *PRESIDENT*,
Nina **Vajić** (Croatia),
Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway),
Giorgio **Malinverni** (Switzerland), *JUDGES*,
Andrey Yuryevich **Bushev** (Russia), *AD HOC JUDGE*,

and also Søren **Nielsen**, *SECTION REGISTRAR.*

Decision of the Court

Admissibility

The Court considered whether the case was inadmissible under Article 35 § 2 of the Convention, according to which it cannot deal with applications which are substantially the same as a matter which has already been submitted to another international body and which contain no relevant new information.

The Court found that the proceedings before the Permanent Court of Arbitration in the Hague brought by YUKOS's majority shareholders and proceedings brought under

bilateral investment treaties by groups of YUKOS's minority shareholders were not "substantially the same" as today's case. The claimants in those arbitration proceedings were YUKOS's shareholders acting as investors, and not YUKOS itself, which at that time was still an independent legal entity. The Court further noted that today's case had been introduced and maintained by YUKOS in its own name. Consequently, the parties in those arbitration proceedings and in today's case were different and the two matters not "substantially the same" within the meaning of Article 35 § 2 (b). The Court therefore held, by six votes to one, that it was not barred from examining the merits of today's case.

Article 6 §§ 1 and 3 (b)

Concerning the 2000 tax assessment proceedings, the Court found a violation of Article 6 §§ 1 and 3 (b) because:

- YUKOS did not have sufficient time to study the case file (at least 43,000 pages) at first instance (four days); and,

- the short interval (21 days) between the end of the proceedings before the first instance court (the judgment became available on 28 May 2004) and the beginning of the appeal proceedings (18 June 2004), restricted YUKOS's ability to advance its arguments and, more generally, to prepare for the appeal hearings (by shortening the statutory time-limit by nine days).

However, it did not find: that the action against YUKOS was arbitrary or unfair; that arbitrary or unfair conduct restrictions had been imposed by the courts on YUKOS's counsel during the hearings; that Moscow City Court had given its judgment without studying the evidence; or, that YUKOS's access to a cassation appeal was unfairly restricted.

Article 1 of Protocol No. 1

2000-2001 tax assessments

Noting that the tax assessment proceedings against YUKOS were criminal in character, the Court recalled that only law could define a crime and its corresponding penalty and that laws had to be accessible and foreseeable. The decision of 14 July 2005 changed the applicable rules on the statutory time-bar by introducing an exception which affected the outcome of the 2000 tax assessment proceedings.

YUKOS's conviction under Article 122 of the Tax Code in the 2000 tax assessment proceedings also laid the basis for finding it liable for a repeat offence, which doubled the penalties due in the 2001 tax assessment proceedings.

The Court therefore found that there had been a violation of Article 1 of Protocol No. 1 regarding the imposition and calculation of the penalties concerning the 2000-2001 tax assessments for two reasons, the retroactive change in the rules on the applicable statutory time-limit and the consequent doubling of the penalties due for the 2001 tax year.

Other tax assessments 2000-2003.

The Court observed that the rest of the 2000-2003 tax assessments were lawful, pursued a legitimate aim (securing the payment of taxes) and were a proportionate measure. They were not particularly high and nothing suggested that the rates of the fines or interest payments imposed an individual or disproportionate burden on YUKOS. The Court therefore found no violation of Article 1 of Protocol No. 1 regarding the rest of the 2000-2003 tax assessments.

Enforcement proceedings

The Court noted that the enforcement of the debt resulting from the 2000-2003 tax assessments involved: the seizure of YUKOS's assets; an enforcement fee amounting to 7% of the total debt; and, the forced sale of OAO Yuganskneftegaz. Those measures constituted an interference with YUKOS's rights under Article 1 of Protocol No. 1.

Throughout the proceedings, the actions of the various authorities involved had had a lawful basis and the legal provisions in question were sufficiently precise and clear to meet Convention standards.

The Court noted that YUKOS was one of the largest taxpayers in Russia and that it had been suspected and subsequently found guilty of running a tax evasion scheme from 2000-2003. It seemed clear that YUKOS had had no cash funds in its domestic accounts to pay its tax debts immediately, and in view of the nature and scale of the debt, it was unlikely that any third party would have agreed to assist it with a loan or some form of security. Given the scale of the tax evasion, the sums involved for the years 2000-2003, the fact, under Russian law, that they were payable almost at once after the production of the respective execution writ, and taking into account the Court's previous findings regarding the fines for the years 2000 and 2001, it was questionable whether, at the time when the Russian authorities decided to seize and auction OAO Yuganskneftegaz, YUKOS was solvent within the meaning of section 3 of the Russian Insolvency (Bankruptcy) Act, which generally expected the solvent debtor to repay its debts "within three months of the date on which compliance should have occurred".

The crux of YUKOS's case was essentially the speed with which it was required to pay and the speed with which the auction had been carried out.

The Court considered that the Russian authorities were obliged to take careful and explicit account of all relevant factors in the enforcement process, but that they had failed to do so. In particular, none of their various decisions mentioned or discussed in any detail possible alternative methods of enforcement. That was of the utmost importance when striking a balance between the interests concerned, given that the sums that were already owed by YUKOS in July 2004 made it rather obvious that choosing to auction OAO Yuganskneftegaz first was capable of dealing a fatal blow to YUKOS's ability to survive the tax claims and to stay in business.

The Court accepted that the bailiffs were bound to follow the applicable Russian legislation which might have limited the available options in the enforcement procedure. Nonetheless, the bailiffs still had a decisive level of freedom of choice, concerning whether or not YUKOS stayed afloat. The Court did not find the choice of OAO Yuganskneftegaz entirely unreasonable, especially in view of the overall amount of the tax-related debt and the pending as well as probable claims against YUKOS. However, it considered that, before definitely deciding to sell the asset that was YUKOS's only hope of survival, the authorities should have given very serious consideration to other options, particularly as YUKOS's domestic assets had been attached by court order and were readily available and YUKOS did not seem to object or to have objected to their sale.

The Court further noted that the 7% enforcement fee was a fixed rate which the authorities apparently refused to reduce, and that it had to be paid even before YUKOS could begin repaying the main debt. In the circumstances of the case, the sum to be paid was completely out of proportion to the expected or actual amount of the enforcement expenses. Because of its rigid application, it contributed very seriously to YUKOS's demise.

The authorities were also unyieldingly inflexible as to the pace of the enforcement proceedings, acting very swiftly and constantly refusing to concede to YUKOS's demands

for additional time. Such a lack of flexibility had a negative overall effect on the conduct of the enforcement proceedings against YUKOS.

Given the pace of the enforcement proceedings, the obligation to pay the full enforcement fee and the authorities' failure to take proper account of the consequences of their actions, the Court found that the Russian authorities had failed to strike a fair balance between the legitimate aims sought and the measures employed, in violation of Article 1 of Protocol No. 1.

Article 14

The Court reiterated that nothing in the case file suggested that YUKOS's tax arrangements during the years 2000-2003, taken in their entirety, including the use of fraudulently-registered trading companies, were known to the tax authorities or the national courts or that they had previously upheld them as lawful. It therefore could not be said that the authorities passively tolerated or actively endorsed them.

YUKOS had failed to show that other Russian taxpayers used or continued to use the same or similar tax arrangements and that it was singled out. It was found to have employed a tax arrangement of considerable complexity, involving, among other things, the fraudulent use of trading companies registered in domestic tax havens. That was not simply the use of domestic tax havens, which might have been legal.

The Court therefore concluded that there had been no violation of Article 14, taken in conjunction with Article 1 of Protocol No. 1.

Article 18

The Court found that YUKOS's debt in the enforcement proceedings resulted from legitimate actions by the Russian Government to counter the company's tax evasion.

Noting, among other things, YUKOS's allegations that its prosecution was politically motivated, the Court accepted that the case had attracted massive public interest. However, apart from the violations found, there was no indication of any further issues or defects in the proceedings against YUKOS which would have enabled the Court to conclude that Russia had misused those proceedings to destroy YUKOS and take control of its assets.

The Court therefore found no violation of Article 18, taken in conjunction with Article 1 of Protocol No. 1, on account of the alleged disguised expropriation of YUKOS's property and the alleged intentional destruction of YUKOS itself.

Other Articles

The Court found that there was no need to examine the same facts separately under Articles 7 and 13.

Separate opinions

Judges Jebens expressed a partly dissenting opinion; and Judge Bushev expressed a partly dissenting opinion, joined in part by Judge Hajiyev. Those opinions are annexed to the judgment.

The judgment is available only in English.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Emma Hellyer (tel: + 33 3 90 21 42 15)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)