

Advocate-General advises Dutch Supreme Court to dismiss Russia's appeal and uphold \$50 billion Yukos awards

23 April 2021, The Hague

Today, the Advocate-General of The Netherlands advised the Dutch Supreme Court to dismiss the Russian Federation's cassation appeal in its entirety and to uphold the 2020 Court of Appeal ruling which reinstated the Arbitral Awards in favour of the former Yukos majority shareholders. The Awards order Russia to compensate the shareholders for the unlawful expropriation of their investment. The compensation amounts to more than \$50 billion, a measure of the company's success before it was destroyed.

Tim Osborne, GML's Chief Executive, said: "The Advocate-General has rightly endorsed the Court of Appeal ruling, which is thorough, well-reasoned and correct. He underlines that the Russian Federation is bound by the treaties it signs, and cannot escape the rule of law. We are confident that the Supreme Court of The Netherlands will likewise uphold the Court of Appeal's ruling."

In 2014, an independent international Arbitral Tribunal in The Hague [ruled unanimously](#) that the Russian state unlawfully expropriated Yukos Oil, the country's most successful company and largest taxpayer. The Tribunal found that "Russian courts bent to the will of Russian executive authorities to bankrupt Yukos, assign its assets to a state-controlled company [Rosneft] and incarcerate a man [Mikhail Khodorkovsky] who gave signs of becoming a political competitor."

In February 2020, The Hague Court of Appeal [reinstated the Arbitral Awards](#), overturning a 2016 decision of The Hague District Court to set them aside. The Court of Appeal found that the Arbitral Tribunal had jurisdiction to hear the shareholders' claims since the Russian Federation, whilst it had signed but not ratified the Energy Charter Treaty (ECT), had provisionally applied the ECT, including its provisions regarding dispute resolution. The Court of Appeal dismissed the Russian Federation's other grounds for setting aside the Arbitral Awards.

Since Russia refuses to pay the Arbitral Awards, the former Yukos majority shareholders are enforcing them worldwide, invoking the New York Convention. This allows the shareholders to seize Russian commercial state assets in more than 160 countries. In December 2020, the Supreme Court dismissed Russia's application to suspend enforcement of the Arbitral Awards, deciding that the former Yukos majority shareholders may continue to enforce them. Following a preliminary review of Russia's appeal, the Supreme Court ruled that the likelihood of Russia's arguments succeeding was not such as to warrant any suspension of enforcement.

Following recent judgments in the US and English courts, which have kept enforcement proceedings on hold since 2016, the final rejection of the Russian Federation's appeal by the Dutch Supreme Court will allow the former Yukos majority shareholders to resume proceedings immediately in those jurisdictions.

Note to the editor:

GML, through its wholly-owned subsidiaries, Yukos Universal Limited and Hulley Enterprises Limited, together with Veteran Petroleum Limited, a pension fund serving former Yukos employees, were the majority shareholders of the former Yukos Oil Company. In 2005, they commenced arbitration proceedings against the Russian Federation pursuant to the Energy Charter Treaty, seeking compensation for the illegal expropriation of their investments.

In its [Final Awards](#) of 2014, the Arbitral Tribunal sitting in The Hague concluded that:

- “Russian courts bent to the will of Russian executive authorities to bankrupt Yukos, assign its assets to a State-controlled company, and incarcerated a man who gave signs of becoming a political competitor;
- the State’s campaign of intimidation and harassment not only disrupted the operations of Yukos but also contributed to its demise;
- the primary objective of the Russian Federation was not to collect taxes but rather to bankrupt Yukos and appropriate its valuable assets.”

The Russian Federation applied to the Dutch courts to have the Arbitral Awards set aside. National courts in The Netherlands have jurisdiction over the set-aside process since The Hague was the seat of the arbitration. In 2016, the District Court of The Hague decided to set aside the Arbitral Awards. It ruled that the Arbitral Tribunal did not have jurisdiction to hear the claims since the Russian Federation had signed but not ratified the Energy Charter Treaty (ECT), the legal basis for the arbitral proceedings.

In February 2020, in a [detailed 134-page judgment](#), the Court of Appeal of The Hague quashed the decision of the District Court and reinstated the Arbitral Awards. The Court of Appeal found that the Arbitral Tribunal did have jurisdiction to hear the shareholders’ claims since the Russian Federation, whilst it had signed but not ratified the ECT, had provisionally applied the ECT, including its provisions regarding dispute-resolution.

On 15 May 2020, the Russian Federation filed its cassation appeal with the Supreme Court of the Netherlands; on 17 July 2020, the former Yukos majority shareholders filed their statement of defence. On 5 February 2021, the Supreme Court held a short hearing of the parties’ arguments.

You can find more information on our website: www.gmllimited.com

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