

## **Rosneft manipulated the judicial process in The Netherlands**

### **Fraud**

*In the bare-knuckle fight for the assets of the bankrupt Yukos the Russian state-owned oil company Rosneft wrote verdicts itself*

NRC, November 24<sup>th</sup>, 2016

By Joep Dohmen en Renée Postma

<https://www.nrc.nl/nieuws/2016/11/24/rosneft-manipuleerde-de-rechtsgang-in-nederland-5470557-a1533486>

Russian state-owned oil company Rosneft has manipulated the judicial process in The Netherlands. The company personally wrote verdicts of judges in Armenia to substantiate a multi-million dollar claim against the former owners of the dismantled Russian oil company Yukos in Amsterdam courts.

Rosneft was assisted by the American legal firm Baker Botts LLP and authorities in Armenia and Russia, including former members of the Russian secret service FSB. This is evident from dozens of e-mails and documents in the possession of NRC.

Yukos attorneys submitted proof of Rosneft's manipulation during a legal procedure in Amsterdam back in 2014, but it was never made completely public before. An Armenian judge who was forced to cooperate has confirmed the manipulation as a witness in court. He received political asylum in the United States.

The damning information comes from the computer belonging to the director of a Rosneft sister company and from the e-mail account of Rosneft's Armenian attorney. Yukos won't say how it obtained these confidential documents.

For ten years, Yukos was the largest oil company in Russia, led by Michail Chodorkovski. He was an important adversary of president Vladimir Putin. In 2003 he was arrested on charges of fraud. The Russian tax authorities imposed tens of billions in tax assessments on Yukos. When the company went bankrupt afterwards, the oil fields, refineries and pipelines fell into the hands of state-owned oil company Rosneft.

Two foreign divisions, a Dutch and Armenian branch, stayed out of Rosneft's hands due to a protective construction using Dutch foundations. Rosneft went to court in Amsterdam to try and gain control over the Armenian branch. That made it important that it was determined in Armenia that Rosneft was the rightful owner of the Armenian branch.

One of the manipulated verdicts is a judgment of October 29th, 2010 from the court of cassation in Armenia. The verdict reads that Rosneft is the rightful owner of the Armenian branch. The judgment influenced the Dutch judicial process. Based on this judgment, the Amsterdam appeals court ruled on May 17th, 2011 that Rosneft had to be recognized as shareholder of Yukos in Armenia and that the Yukos parties had to turn over their entire administration to Rosneft.

After the documents about Rosneft's manipulation were allowed into evidence by the Amsterdam court in 2015, Rosneft withdrew its claim against the Armenian branch of Yukos. In the settlement that followed, the former owners of Yukos were allowed to keep these assets worth at least 337 million dollars (314 million euro). This money is now being divided among the former shareholders.

Conspicuous is the key role of the American law firm Baker Botts. The text of one of the verdicts from the court of cassation was written from inside the Moscow branch of Baker Botts. Mail exchanges show how office employees acted as ghostwriters of verdicts. During the process of manipulation, Rosneft called upon to key figures in the judicial branch and the office of the Armenian public prosecutor, and legal advisors of the Armenian president Serzi Sarkisian.

Baker Botts and Rosneft reject the accusations that they have influenced the judicial process in Armenia. Yukos says this case shows how far Russia is prepared to go.

## **How Rosneft rigged the judicial process in its own favor**

### **Russian fraud**

*Revealing emails show how Russian state-owned oil company Rosneft manipulated the rule of law in The Netherlands and Armenia. "Delete all correspondence after reading".*

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<https://www.nrc.nl/nieuws/2016/11/24/rosneft-liet-het-vonnis-aanreiken-op-een-usb-stick-5470460-a1533485>

### **Moscow, February 21, 2011**

For weeks now, the Russian capital is in the grip of temperatures of below 30 Celsius. Gasjeka Street, in a business district where firms like Citibank and Goldman Sachs are housed, feels like Siberia. It's ten-thirty when Edward Mouradian crawls from a taxi. Soon thereafter he reports in at the offices of the American law firm Baker Botts. Mouradian left Armenia in a hurry at five o'clock this morning. He's a lawyer and, like Baker Botts, is retained by the Russian state-owned oil company Rosneft. There's a rush job to be done.

Two thousand kilometers South, in the capital city of Jerevan in the former Soviet State Armenia, judge Surik Ghazaryan will rule two days from now in 'case 1494' between Rosneft and the former owners and directors of Yukos Oil, once Russia's largest oil company. The judge must decide who is the rightful owner of Yukos CIS, the Armenian branch of the bankrupt and dismantled Yukos. Rosneft already got all the oil fields, refineries and pipelines of Yukos in Russia and also claims ownership of the Armenian branch. The Yukos camp disagrees. On Gasjeka Street, Mouradian and Baker Botts employees will take over Armenian rule of law that day. They personally write the verdict that judge Ghazaryan will read two days later. A verdict that is in favor of Rosneft.

### **Amsterdam, May 17, 2011**

Rosneft also stays on the initiative in Amsterdam. In the courthouse at Prinsengracht, the Russian state-owned oil company has the winning hand in a number of procedures against Yukos. Both parties are in court because the Armenian properties of Yukos have been placed behind a legal protective structure in The Netherlands -- through an Amsterdam foundation -- to prevent their shares from being raided by Rosneft. At stake is ultimate control over the Armenian branch, worth 337 million dollars (314 million Euros). The Dutch judge has to decide whether Rosneft can fire the Yukos board members. That's only allowed if it is determined that the take-over of Yukos CIS in Armenia by Rosneft was lawful. Rosneft's strategy works. The Dutch court bases its judgment on the earlier verdict by judge Surik Ghazaryan in Armenia. Following international treaties, Dutch judges take over foreign verdicts in business conflicts. The Amsterdam court rules therefore that Rosneft must be recognized as shareholder of Yukos CIS. Former management must transfer the entire administration of Yukos CIS to Rosneft.

### **Ghazaryan's flight**

Eighteen months of appeals, cassations and summary procedures later, the Amsterdam court takes a new look at the conflict. In the fall of 2012, chief judge Jan Peeters hears Yukos lawyers read a statement from judge Surik Ghazaryan, who issued the Rosneft-drafted verdict in Armenia a year and a half earlier. In the meantime, he's become a former judge. Ghazaryan appears to have fled Armenia. He now lives with his family in the United States where he has been granted political asylum. Ghazaryan is assisted by the Yukos camp, which also supports him financially.

In a notarized statement, Ghazaryan talks about his verdict in 'case 1494' from February of 2011. He was handed the text by a superior and could do nothing but follow his instructions, he claims. He was already under fire. Back in 2010, Ghazaryan had a conflict with his superiors in an earlier Yukos case because he refused to participate in 'telephone justice', a tradition from the Soviet era in which a verdict is prompted from above.

Ghazaryan is assigned 'case 1494' at the end of 2010. He tried to get out of it by calling in sick, he explains. His highest superior forced him to issue the ruling anyway. Almost immediately afterwards, Ghazaryan is dumped. The experienced judge – a decorated former air force soldier – is forced to submit his resignation. With loss of all privileges and pension. He's not even allowed to download his personal poems from his computer. The humiliation of the judge who tried to push back is complete.

Chief judge Peeters listens to the story in the Amsterdam courtroom. If it's true what Ghazaryan says, then the independent judicial process has been undermined, also in The Netherlands. In a temporary ruling, Yukos lawyers get the opportunity to submit additional proof there was no independent and impartial judicial process in Armenia. If they succeed, the protective construction in The Netherlands will remain standing, the temporary ruling reads.

### **The unmasking of Rosneft**

The Yukos parties work in mysterious ways. When is not exactly clear, but sometime in 2013, Yukos obtains e-mails from the computer of a high-level Rosneft manager. The same happens with e-mails of the Armenian law office of Edward Mouradian, who took the early flight to Moscow back in 2011. The haul consists of documents that show, according to the Yukos camp, that there was no impartial judicial process in Armenia. Not in the verdict of judge Ghazaryan, and not in the other Yukos verdicts. The Yukos lawyers submit the materials to the Amsterdam court in the summer of 2014. Their conclusion: Rosneft has subjugated the Armenian court system and thereby manipulated the Dutch judicial process.

The Rosneft camp tries to prevent the e-mails from being entered into the court procedure. The Rosneft camp claims they were hacked, and therefore illegally obtained. That plea doesn't work. In January of 2015, the court rules the productions will remain part of the exhibits. NRC has these exhibits. The information from the e-mails matches in detail what former judge Ghazaryan testified about earlier under oath. Rosneft has, aided by the American Baker Botts and the office of attorney Edward Mouradian, corrupted the judicial branch in Armenia.

### **The Russian secret service**

It's generally assumed in the West that the rule of law in Russia in politically sensitive dossiers is being steered by the Kremlin. The dismantling of oil company Yukos is an example of that. The documents show, perhaps for the first time, in detail how that's being arranged behind the scenes.

It appears Rosneft is connected to the highest levels of power in Armenia. Not just judges are deployed, but also the office of the public prosecutor, the bureau of the president and contacts of the FSB, the Russian secret service. A central figure is attorney Edward Mouradian. He's not just an attorney. Mouradian is a former judge, former minister and advisor to the Armenian government. The mails also mention a Gevorg Kostanyan. At the time he's legal advisor to the president and Armenia's representative at the European Court of Human Rights.

The Rosneft legal team is aware of the fact that manipulating the judicial process is illegal, the mails show. A Rosneft legal assistant mails a colleague in the summer of 2010 asking to keep the activities quiet. Another example is an e-mail from attorney Mouradian with instructions to the Armenian civil servant Armen Nikoghosyan. He sends a copy of that e-mail to a colleague with the message "top secret – destroy all correspondence after reading".

Civil servant Armen Nikoghosyan is head of the department for the protection of state interests at the Public Prosecution office. Nikoghosyan receives his instructions from Moscow through the e-mail address [sedalgo@mail.ru](mailto:sedalgo@mail.ru). That's the address of his father's import-export firm. In the secret mails Nikoghosyan is explained what is and what isn't in the interest of Rosneft and what requirements the verdict should have. Nikoghosyan doesn't operate independently. His highest superior, the Attorney General, also knows about it, the mails indicate. At the judicial branch, execution of the instructions is in the hands of judge Drmeyan at the court of cassation. Drmeyan is the man who gave Surik Ghazaryan the usb stick carrying the verdict written by Rosneft. In turn, Drmeyan reports to judge Mkrtumyan, president of the court of cassation.

It's a well-oiled machine that betrays the hand of secret service FSB. Former FSB captain Achkoebek Achkoebekov – currently employed by Rosneft – is portrayed in the mails as the greaser who helps out where he can. Using his private e-mail address, he channels draft verdicts to Rosneft lawyers and stays in touch with the Armenian government.

### **Manipulated verdicts**

In total, the powerful Russian state-owned oil company drafts the verdicts in five cases heard by the court and court of cassation. Rosneft wins them all.

One of these is 'case 1494'. The e-mails show exactly how it's done. From the early flight of lawyer Mouradian to a freezing Moscow to the details about drafting the verdict. At the Moscow branch of the American law firm Baker Botts, partner Ryan Bull and his colleague Izabella Sarkisyan contribute to the drafts.

The Russian state-owned oil company's legal team also drafts the judgment of the court of cassation of May 11<sup>th</sup> 2011. Attorney Mouradian makes changes in that draft which end up verbatim in the ultimate judgment. The text is supplied in full, including the official seal of the Armenian Republic.

The judgment of October 29<sup>th</sup> 2010, in which the court of cassation rules that Rosneft is the rightful owner of the Armenian branch of Yukos, is also spoon-fed. And ahead of the decision by the court of cassation on July 19<sup>th</sup>, 2010, attorney Ryan Bull receives an e-mail from Rosneft with the question whether the attached "*possible decision of the court of cassation*" supports "*our interests of the case in The Netherlands*".

Another example is the manipulation of a judgment of the court of June 10<sup>th</sup> 2011. Rosneft determines that it must be stated in the verdict that the procedure was in agreement with the European Convention of Human Rights. The court takes over the suggestion verbatim. The e-mails show that Rosneft attorneys already have the definitive text of the judgment in their possession three days before it is being rendered.

### **Amsterdam, April 1, 2015**

The tide shifts for Rosneft. No matter how loudly the Russian oil company protests, the Amsterdam court allows Yukos to submit the damaging emails as procedural evidence. After which the judge is ready to render judgment. Chief justice Peeters had been clear from the beginning: if Yukos can prove there was no independent and impartial judicial process in Armenia, the protective construction in The Netherlands will remain in effect.

Before the manipulation of the rule of law can become an issue in a public hearing, and before the court can render judgment, the Rosneft camp takes a rigorous decision. The Russians want to settle. Rosneft withdraws all claims on the Armenian branch of Yukos. The former owners are allowed to keep all assets. At least 337 million dollars is divided among all shareholders who lost their investment after the expropriation of Yukos. It's the first money from the capital of the dismantled oil company that flows to the former shareholders. In turn, Yukos drops its claims against Rosneft. And – not unimportantly – the manipulation of the rule of law stays behind closed doors.

Documentation, e-mails and reactions: [www.nrc.nl](http://www.nrc.nl). Reactions? Mail to [onderzoek@nrc.nl](mailto:onderzoek@nrc.nl).

### **Rosneft: verdicts were reached correctly**

**Rosneft** reacts that the Armenian verdicts were reached correctly. In the Dutch procedures both parties made accusations about the other, says the oil company. These have been discussed at length, after which the case was settled, according to Rosneft, which considers the case "closed".

**Baker Botts** rejects all accusations that its lawyers would have influenced the rule of law in Armenia. "This accusations (...) date from a procedure from three years ago which has since been settled". Baker Botts says "regarding the rules of confidentiality" it cannot give further comment.

The Armenian attorney **Edward Mouradian** denies having manipulated judicial verdicts. He can't react in detail, he says, because parties have settled.

A spokesperson from **Yukos** says this shows how far the Russian Federation is willing to go to manipulate the rule of law.

The complete reactions:

### **Baker Botts**

"These allegations made by the Yukos parties, and similar allegations made by Rosneft about the Yukos parties, were made more than three years ago in litigation that was subsequently settled. Any suggestion that Baker Botts lawyers perverted justice in Armenia is false. At all times Baker Botts lawyers acted lawfully and ethically. Given the rules surrounding client confidentiality we cannot provide further comment."

### **Rosneft**

"We expect your source has given you access to the entire court file, so you will know that the ill-founded contentions you refer to were strongly denied in a Dutch court years ago. The decisions of the Armenian courts were correct on the merits under Armenian law. We are confident that you will also note that similar allegations of misconduct were made against the Yukos side. The Armenian issues with allegations of impropriety made by both parties against each other were fully briefed in court and settled two years ago as part of an overall settlement. Voluminous pleadings on these issues are available from the court file and a newspaper is not well-equipped to deal with the matter. Thus, discussions of separate episodes are futile. The sudden interest to a long ago closed issue is another attempt on the Yukos side to reverse the course of the pending litigations and overcome their recent losses through mass media in order to influence the public opinion and the courts. We understand Yukos' hope to make up for the lack of legal arguments by the press publications, but we will not encourage such attempts and consider the matter closed."

### **Edward Mouradian**

"We would like to thank you for giving us an opportunity to comment on the allegations. We deny any fact of improperly influencing court decisions by any member of Prudence. However, we are not in position to further elaborate on the allegations as the matter has been settled between the parties and we are bound by rules of attorney-client confidentiality."

### **Yukos**

"The Yukos Foundations' board has spent a decade fighting the Russian Federation and its network of lawyers and state-run businesses to protect its financial assets and return them to their rightful owners. This case shows the extent to which the Russian Federation will go to manipulate the legal process and ignore the rule of law" said a Yukos spokesperson."

### **Timeline: the fall of Yukos**

The Russian oil company Yukos was declared bankrupt by a Russian judge in 2006. Its leader Michail Chodorkovski was already arrested in 2003 on charges of corruption and tax evasion. In 2005 he was convicted to eight years in a prison camp. He was released in 2013 and currently lives in Switzerland. Yukos was born from the Russian privatization in the nineties and grew to become one of the largest oil companies in the world. At the beginning of the century, Chodorkovski came into conflict with president Putin when he demonstrated political ambitions. After its bankruptcy, Russian assets of Yukos fell into the hands of Rosneft, which is headed by Igor Setjins, a Putin confidant. In 2014, the Permanent Court of Arbitration sentenced Russia to a 50 billion dollar fine because it had violated the International Energy Charter. That verdict was reversed by a court in The Hague, a decision that is subject to appeal by the former owners. Earlier, the European Court of Human Rights (ECHR) had awarded the Yukos camp a 1.9 billion euro settlement. That money was never paid because a Russian judge ruled in 2015 that national legislation has priority over verdicts from the ECHR.