

## **Supreme Court of The Netherlands hears Russia's final attempt to set aside \$50 billion Arbitral Awards granted to Yukos shareholders**

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**On Friday 5 February, the Supreme Court of The Netherlands holds a hearing on the Russian Federation's appeal against the Court of Appeal judgment reinstating the 2014 Arbitral Awards. The Awards order Russia to compensate the former Yukos majority 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 Court of Appeal's judgment is detailed, thorough and well-reasoned. We are confident that it will be upheld."**

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. 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.

On 5 February 2021, the Supreme Court of The Netherlands will hear oral submissions from the Russian Federation and the former Yukos majority shareholders. In accordance with the Supreme Court practice, the oral hearing will be short, with parties having one hour each to introduce their positions, followed by short responses. In their written submissions, filed with the Supreme Court on the same day, the parties will set out their arguments in full as to whether the Court of Appeal judgment (and thus the Arbitral Awards) should be upheld.

**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 claims brought by the former shareholders on the basis that 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 a cassation appeal against the judgment of the Court of Appeal with the Supreme Court of the Netherlands. On 17 July 2020, the former Yukos majority shareholders filed their statement of defence.

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