

Dutch Supreme Court has jurisdiction to suspend enforcement of decision reviving Yukos awards (Dutch Supreme Court)

by Geert Wilts, *Van Oosten Schulz De Korte Advocaten*

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In *Russian Federation v Hulley Enterprises Ltd and others (NL:HR:2020:1511)*, the Dutch Supreme Court ruled that it has jurisdiction to suspend the enforcement of The Hague's Court of Appeal decision reviving the Yukos awards.

The Dutch Supreme Court has ruled that it has jurisdiction to suspend the enforcement of the decision by the Court of Appeal in The Hague, reviving the Yukos awards.

The decision relates to Russia's request to set aside the awards awarding some USD50 billion in damages to the former Yukos shareholders following the expropriation of their investments. After The Hague District Court set aside the awards in April 2016, the Appeal Court revived the awards in February 2020 (see *Legal update, Court of Appeal in The Hague overturns District Court decision and revives Yukos awards*).

Russia appealed to the Supreme Court and filed an application to suspend the enforcement of the Appeal Court's decision until an irrevocable decision on the setting aside of the awards is rendered or, to order the shareholders to provide security. The Yukos shareholders asserted that the Supreme Court did not have jurisdiction to rule on the request for suspension.

Pursuant to article 1066(2) of the *Dutch Civil Procedural Code* (DCPC; *Wetboek van Burgerlijke Rechtsvordering*), in force until 1 January 2015 when it was amended, the court that is hearing the application to set aside can suspend enforcement until an irrevocable decision on the setting aside application is rendered. The Supreme Court held that there is no reason why it is not entitled to suspend enforcement under this provision. In fact, the reference to "the court" usually includes the Supreme Court and parliamentary history does not dictate otherwise. The fact that article 1066(3) of the DCPC provides that the clerk of "the district court" sends a copy of the request for suspension to the counterparty as soon as possible, is not considered to limit the jurisdictional rule in article 1066(2). Contrary to what the shareholders argued, the fact that a claim for suspension of an award can also be filed in urgent relief proceedings does not limit the jurisdiction to rule on a request for suspension within the meaning of article 1066 of the DCPC.

The Supreme Court clarified that this rule also applies to the Dutch arbitration law in force as of 1 January 2015.

The Supreme Court allowed the shareholders to respond to the merits of the request for suspension and reserved any further decision.

Case: *Russian Federation v Hulley Enterprises Ltd and others (NL:HR:2020:1511)* (25 September 2020).

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