

Dutch Supreme Court refuses to suspend enforcement of Yukos awards

by *Practical Law Arbitration*, with *Van Oosten Schulz De Korte Advocaten*

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In *Russian Federation v Hulley Enterprises Ltd and others* (ECLI:NL:HR:2020:1952), the Dutch Supreme Court rejected Russia's request to suspend the enforcement of the Yukos awards, ruling that the chances of Russia's setting aside claim succeeding did not justify a suspension.

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The Dutch Supreme Court has refused to suspend the enforcement of the Yukos awards, as revived by the decision of the Court of Appeal in The Hague in February 2020 (see [Legal update, Court of Appeal in The Hague overturns District Court decision and revives Yukos awards](#)). In September 2020, the Dutch Supreme Court ruled that it had jurisdiction to suspend enforcement (see [Legal update, Dutch Supreme Court has jurisdiction to suspend enforcement of decision reviving Yukos awards](#)). The shareholders then filed a defence on the merits and a hearing took place in October 2020.

The Supreme Court provisionally ruled on each of Russia's grounds for setting aside. As to the lack of a valid arbitration agreement, it ruled, among other things, that whether arbitration under article 26 of the Energy Charter Treaty (ECT) violated Russian law, partially concerning the interpretation of Russian law, was not subject to review by the Supreme Court. On the violation of the tribunal's mandate, it ruled, among other things, that the tribunal failing to consult the Russian tax authorities pursuant to article 21(5) of the ECT did not justify the awards being set aside. It also held that:

- On the composition of the tribunal, the tribunal's assistant significantly contributing to parts of the final award did not mean that the arbitrators had left the decision-making to the assistant.
- As to the award lacking meaningful reasoning, it was unlikely that a violation of due process would result in the awards being set aside.
- On violation of public policy, there was insufficient reason to rule contrary to the appeal court's ruling that Russia's arguments in this regard qualified as a ground for revocation of the awards and that such arguments cannot be invoked in setting aside proceedings.

Although the Supreme Court considered that enforcement of the awards carries a certain risk, it ruled that the enforcement process was complicated and could be expected to take longer than the setting aside proceedings. Therefore, it rejected Russia's request for suspension of enforcement and its alternative request to order the shareholders to post security.

Case: *Russian Federation v Hulley Enterprises Ltd and others* (ECLI:NL:HR:2020:1952) (4 December 2020).

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