

# Attorney-General advises Dutch Supreme Court to keep Yukos awards in place

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

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In *Russian Federation v Hulley Enterprises Limited and others* (ECLI:NL:PHR:2021:425), the Attorney-General at the Dutch Supreme Court advised the court to keep the Yukos awards in place.

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*Geert Wilts, Van Oosten Schulz De Korte Advocaten*

The Attorney-General (AG) at the Dutch Supreme Court has issued an opinion advising the Dutch Supreme Court to reject the appeal against the Court of Appeal's decision reviving the Yukos awards (for details of the Court of Appeal's decision see [Legal update, Court of Appeal in The Hague overturns District Court decision setting aside Yukos award.](#))

The AG considered that the Court of Appeal wrongly assumed that a party can only claim revocation of an award instead of setting it aside in cases involving fraud committed in an arbitration. However, he opined that, as Russia had not invoked fraud in its setting aside summons at first instance, but only in its statement of defence on appeal, the Court of Appeal had rightfully refused to rule on Russia's fraud claims.

The AG agreed with the Court of Appeal that state courts do not need to set aside an award for lack of jurisdiction if they establish a ground for the tribunal's jurisdiction different to that established by the tribunal, and advised the Supreme Court to dismiss the appeal against the Court of Appeal's ruling that the tribunal had jurisdiction based on its interpretation of article 45(1) of the Energy Charter Treaty (ECT).

The AG also noted that the Supreme Court cannot rule on whether article 26 of the ECT violates Russian law, as the application of foreign law is not subject to review by the Supreme Court.

Further, the Court of Appeal had correctly interpreted "investment" and "investor" under article 1(6) and (7) of the ECT and correctly ruled that the shareholders and their investments qualified as such. Any unlawfulness in how the shareholders obtained their shares did not cause the tribunal to lack jurisdiction.

He considered there was no need to seek a preliminary ruling from the European Court of Justice on certain issues and advised that all setting aside grounds be dismissed, including the secretary's role in drafting the award.

The Supreme Court recently ruled that the chances of Russia's setting aside claim succeeding did not justify a suspension of the enforcement of the Yukos awards (see [Legal update, Dutch Supreme Court refuses to suspend enforcement of Yukos awards.](#)). The AG's advice is another indication that the Supreme Court will rule in favour of the shareholders. The Supreme Court's decision is eagerly anticipated.

Case: *Russian Federation v Hulley Enterprises Limited and others* (ECLI:NL:PHR:2021:425) (23 April 2021).

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