

Kluwer Arbitration Blog

Yukos Awards set Aside by The Hague District Court

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In a highly anticipated judgment which was handed down on 20 April 2016, The Hague District Court (the “**Court**”) set aside the \$50 billion Yukos awards rendered against the Russian Federation in arbitration proceedings administered by the Permanent Court of Arbitration in The Hague. The Court, which was competent to hear Russia’s claim in the setting aside proceedings on the basis that The Hague was the place of arbitration, reached its decision on the grounds that the arbitral tribunal (the “**Tribunal**”) that had rendered the awards lacked jurisdiction. Accordingly, the Court annulled the three interim awards of 30 November 2009, as well as the three final awards of 18 July 2014.

In assessing the competence of the Tribunal, the Court examined in turn whether (i) the Energy Charter Treaty (the “**ECT**”) was provisionally applicable pursuant to Article 45 ECT and (ii) whether or not the arbitration clause of Article 26 ECT was consistent with Russian law.

The Court first examined the effect of what has been labelled as the “limitation clause” of Article 45(1) ECT, which provides that each ECT signatory State agrees to apply the ECT provisionally pending its entry into force “*to the extent that such provisional application is not inconsistent with its constitution, laws or regulations*”.

The Russian Federation submitted that the clause requires a “*piecemeal*” approach, which involves analysing whether each provision of the ECT is consistent with the Constitution, laws and regulations of the Russian Federation. In contrast, the former Yukos shareholders argued that the inquiry is an “*all-or-nothing*” exercise which requires an analysis and determination of whether the principle of provisional application per se is inconsistent with the Constitution, laws or regulations of the Russian Federation.

Whilst the Tribunal had followed the former Yukos shareholders’ “*all-or-nothing*” approach, the Court accepted the Russian Federation’s interpretation of Article 45(1) ECT, finding that its wording necessitated an examination of each separate article of the ECT to determine whether the provisions contained therein were contrary to the constitution or other legislation or regulation of the State concerned. The Court held that the Russian Federation, which never ratified the ECT, was only bound by those provisions of the ECT reconcilable with Russian law, including the 1993 Russian Constitution.

In reaching its conclusion, the Court looked to the Vienna Convention on the Law of Treaties to interpret the “limitation clause”, finding that the ordinary meaning of the words contained in

Article 45(1) ECT supported the interpretation advocated by the Russian Federation.

The Court also considered that for the purposes of interpreting the “limitation clause”, significance should not be attached to the fact that the Tribunal’s opinion was supported by the opinion of another tribunal – incidentally chaired by the same person – in another ECT-based arbitration, namely the *Kardassopoulos v. Georgia* case.

In accordance with its interpretation of Article 45(1) ECT, the Court went on to consider whether the arbitration clause contained in Article 26 ECT (from which the Tribunal derived its competence) was “*not inconsistent*” with the Russian Constitution, laws or other regulations.

The Court rejected the former Yukos shareholders’ view that a provision of the ECT (such as Article 26) can only be incompatible with Russian law if the Treaty provision concerned is expressly prohibited as a matter of national law. The Court found that this limited interpretation was neither supported by a textual interpretation of Article 45 ECT nor self-evident. Rather, the Court held that the provisional application of a provision of the ECT would also be contrary to a signatory State’s national law if it was not in line with its legal system, or if it was irreconcilable with the principles laid down or derived from the State’s national legislation.

Based on the analyses contained in the experts’ reports relied on by the Russian Federation, the Court found that the arbitration clause of Article 26 ECT did not have a legal basis in Russian law and was incompatible with the principles laid down therein. Specifically, the Court was satisfied that Russian law confines the option of arbitration to civil law disputes, and does not provide a basis for the arbitration of disputes arising from legal relations between foreign investors and the Russian Federation of a predominantly public law nature.

Finally, on the basis of Article 45(1) ECT, the Court held that the Russian Federation was not bound by the provisional application of (the arbitration clause of) Article 26 ECT based on its signature of the ECT alone. The Court found that the Russian Federation therefore had never made an unconditional offer to arbitrate disputes, within the meaning of Article 26 ECT. As a result, the former Yukos shareholders’ notice of arbitration served on the Russian Federation did not constitute a valid arbitration agreement, and the Tribunal was not competent to hear the case.

In view of the above findings, the Court deemed it unnecessary to consider the other grounds for setting aside the awards that had been invoked by the Russian Federation in the proceedings.

The former Yukos shareholders were ordered to pay the costs incurred by the Russian Federation in the setting aside proceedings, which were provisionally estimated, up to this judgment, at €16,801.80 each.

Representatives of the former Yukos shareholders have already announced that they will appeal the judgment of the Court. They have three months to lodge such an appeal with The Hague Court of Appeal. The appeal will involve a full *de novo* hearing.

In the meantime, it remains to be seen if and to what extent the judgment of the Court will impact pending recognition and enforcement proceedings brought by the former Yukos shareholders in a number of jurisdictions around the world.

Click [here](#) for an unofficial English translation of the judgment

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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