

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

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HULLEY ENTERPRISES LTD.,	)	
YUKOS UNIVERSAL LTD., AND	)	Case No. 1:14-cv-01996-BAH
VETERAN PETROLEUM LTD.,	)	
	)	
<i>Petitioners,</i>	)	Chief Judge Beryl A. Howell
	)	
v.	)	
	)	
THE RUSSIAN FEDERATION,	)	
	)	
<i>Respondent.</i>	)	
_____	)	

**SEVENTH DECLARATION OF PROFESSOR ALBERT JAN VAN DEN BERG**

I, ALBERT JAN VAN DEN BERG, declare as follows:

1. I am an attorney admitted to practice law in the Netherlands. I have expertise in international arbitration, Dutch arbitration law, and litigation under the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”). My qualifications and role as lead counsel to the Russian Federation in relation to the worldwide post-arbitration legal proceedings in this case, including in the relevant Dutch annulment litigation, are further detailed in my previous Declarations (ECF 24-9, 108-2, 127-1, 152-2, 180, and 182-1).<sup>1</sup>

2. On 5 November 2021, the Dutch Supreme Court annulled the judgments of the Court of Appeal of The Hague of 25 September 2018 and 18 February 2020. The Dutch

<sup>1</sup> The present Declaration has been prepared in consultation with Mr. Rob Meijer of the law firm of Houthoff. Mr. Meijer has provided advice to the Russian Federation in relation to all aspects of Dutch civil procedural law, as further detailed in his First and Second Declarations in these proceedings (ECF 180-6, 182-10).

Supreme Court also referred the case to the Amsterdam Court of Appeal for further adjudication of factual and legal questions relating to the annulment ground raised by the Russian Federation as to procedural fraud allegedly committed by the former Yukos shareholders (the “Petitioners” in this U.S. litigation) during the arbitration proceedings at issue in this case. Petitioners initiated the referral proceedings by summoning the Russian Federation to appear before the Amsterdam Court of Appeal on 4 January 2022.<sup>2</sup> In their most recent status report, Petitioners suggest that they plan to make “initial submissions to the Amsterdam Court of Appeal” on or before 15 February 2022.<sup>3</sup>

3. As a matter of Dutch law, the direct consequence of the Dutch Supreme Court’s cassation judgment of 5 November 2021 is the immediate restoration of the operative part of the first-instance judgment issued originally by the District Court of The Hague on 20 April 2016. As explained by several Dutch legal treatises, “[a]s soon as the judgment on appeal setting aside a judgment in the first instance is pronounced, the judgment in the first instance must be held to have been overturned . . . until the judgment on appeal is set aside by the Supreme Court.”<sup>4</sup>

4. In the present case, the operative part of the judgment of the District Court of The Hague dated 20 April 2016 was set forth in Section 6 thereof (*see* ECF 102-2), which annulled

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<sup>2</sup> Petitioners’ Status Report ¶ 7 (ECF 198).

<sup>3</sup> Petitioners’ Status Report ¶ 7 (ECF 198).

<sup>4</sup> F.J.H. Hovens, *Civiel Appèl* 150 (2007) (emphasis added) (translation from the original Dutch text: “Vanaf het moment dat het arrest, waarbij een vonnis is vernietigd, wordt uitgesproken, heeft dat vonnis te gelden als vernietigd en verliest het zijn werking (ongeacht eventuele uitvoerbaarheid bij voorraad dus), totdat het arrest zelf is vernietigd in cassatie.”); *see also* Snijders & Wendels, *Civiel Appèl* 264 (2009) (“A judgment on appeal setting aside the judgment in first instance has immediate legal force, on the understanding that the legal force of the judgment on appeal may of course in turn be set aside by a ruling of the Supreme Court, which has legal force as from the date on which it is pronounced.” (emphasis added)) (translation from the original Dutch text: “De appeluitspraak die strekt tot vernietiging van de uitspraak van de rechter in eerste aanleg heeft onmiddellijk rechtskracht, met dien verstande dat de rechtskracht van de appeluitspraak uiteraard weer teniet kan worden gedaan door de uitspraak in cassatie, die ook weer rechtskracht heeft vanaf de dag van haar totstandkoming.”).

each of the three interim arbitral awards and the three final arbitral awards at issue in this case. The annulment of the arbitral awards, therefore, is now reinstated under Dutch law as a result of the cassation judgment issued by the Dutch Supreme Court.

5. Accordingly, the ultimate legal effect of the Dutch Supreme Court’s judgment in the cassation proceedings is that the arbitral awards at issue in the present case no longer exist as a matter of Dutch law. This analysis is confirmed by multiple Dutch legal commentaries, which have explained consistently that “[a]n arbitral award that is set aside does not have legal force.”<sup>5</sup> To quote one of the leading authorities on Dutch arbitration law, Professor Pieter Sanders: “What are the effects, once an arbitral award has been set aside in a judgment? . . . [T]here is no longer any award at all . . . . The result of the adjudication—the award . . . no longer exists.”<sup>6</sup> Indeed, even one of the Dutch lawyers for Petitioners, Mr. Albert Marsman, has recently emphasized in his academic writing that “one of the direct consequences of setting aside is that the award no longer has *res judicata* effect.”<sup>7</sup>

6. The logic of this analysis is consistent with public statements made in relation to the present case on 5 November 2021 by a sitting “press judge” speaking on behalf of the Dutch Supreme Court. The public statements of the press judge explain that, as a result of the Dutch Supreme Court’s cassation decision, the Russian Federation presently has “[n]o obligation to

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<sup>5</sup> G.J. Meijer, *Overeenkomst tot arbitrage* 949 (2011) (“Een arbitraal vonnis dat wordt vernietigd komt geen rechtskracht toe.”); *see also* H.J. Snijders et al., *Arbitragerecht* 136 (1992) (“Setting aside naturally entails the arbitral award not acquiring legal force.”) (translation from the original Dutch text: “In de eerste plaats brengt vernietiging uiteraard met zich mee, dat aan het arbitraal vonnis geen rechtskracht toekomt.”).

<sup>6</sup> P. Sanders, *Aantasting van arbitrale vonnissen* 193 (1940) (“Wat zijn de gevolgen, wanneer de nietigheid van het arbitrale vonnis is uitgesproken? Wanneer alsdan geen arbitraal vonnis van eersten aanleg is overgebleven, is er in het geheel geen vonnis meer. Het geschil van partijen is echter terecht en wel conform hun wensch door arbiters in plaats van door den overheidsrechter. Het resultaat dezer berechting, het vonnis, is er echter niet meer.”).

<sup>7</sup> A. Marsman, *International Arbitration in the Netherlands* (2021).

pay” any compensation to Petitioners.<sup>8</sup> “That implies that Russia is for now not obliged to pay 50 billion in damages to the three former shareholders of Yukos,” such that “Russian state property abroad cannot be seized.”<sup>9</sup>

7. Accordingly, in light of the academic commentaries quoted above and the public statements by the press judge speaking on behalf of the Dutch Supreme Court, the cassation judgment rendered on 5 November 2021 should be interpreted as reinstating the decision of the District Court of The Hague to annul the arbitral awards at issue in the present case. The Russian Federation therefore has “[n]o obligation to pay” any compensation under these arbitral awards,<sup>10</sup> which must be understood as “no longer exist[ing]” within the Dutch legal system.<sup>11</sup>

8. As a matter of Dutch law and judicial procedure, the decision either to reinstate the arbitral awards or reaffirm their annulment will next be addressed by the Amsterdam Court of Appeal, after which either Petitioners or the Russian Federation may ultimately seek further review before the Dutch Supreme Court by pursuing a second cassation appeal. Petitioners themselves have already commenced the next phase of this legal process by serving a writ of summons (attached hereto as “Exhibit 1”) on the Russian Federation on 16 November 2021, which will have the procedural effect of initiating a new case before the Amsterdam Court of

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<sup>8</sup> *Hoge Raad verwijst slepende Yukos-zaak naar gerechtshof Amsterdam*, NOS (November 5, 2021): The public statement was quoted in a news article by NOS (attached hereto as “Exhibit 2”) (The text in Dutch: “Geen betalingsverplichting. Andere klachten van Rusland zijn wel verworpen, waarmee de uitspraak van het Haagse gerechtshof op deze punten blijft staan. Rusland hoeft vooralsnog geen schadevergoeding te betalen op grond van eerdere uitspraken. ‘Uit de uitspraak volgt geen betalingsverplichting’, zegt een woordvoerder van de Hoge Raad.”).

<sup>9</sup> The public statement was quoted in an article by NRC, a Dutch news outlet (attached hereto as “Exhibit 3”). *Verrassende slag voor Rusland in ‘grootste arbitragezaak ooit*, NRC (Nov. 5, 2021) (The text in Dutch: “Dat betekent dat Rusland voorlopig nog geen 50 miljard dollar schadevergoeding hoeft te betalen aan drie voormalige aandeelhouders van Yukos.”).

<sup>10</sup> See NOS (Ex. 2), *supra*.

<sup>11</sup> Sanders, *supra*, at 193 (“Het resultaat dezer berechting, het vonnis, is er echter niet meer.”).

Appeal on Tuesday, 4 January 2022. This date corresponds to the first administrative session scheduled on the procedural calendar of the Amsterdam Court of Appeal for the coming year.

9. The proceedings before the Amsterdam Court of Appeal can be expected to take at least one further additional year, as it is highly likely that the Amsterdam Court of Appeal will render an interim decision with respect to evidentiary matters under Article 232 of the Dutch Code of Civil Procedure (“DCCP”). Under Article 353 DCCP, the same rules of evidentiary procedure that ordinarily apply to litigation before a District Court in the Netherlands—*e.g.*, with respect to the hearing of witnesses, exchanges of documents, and evaluation of expert testimony—will also apply *mutatis mutandis* to the instance of fact-finding by the Amsterdam Court of Appeal.

10. I declare under penalty of perjury under the laws of the United States of America that the foregoing statements of fact are true and correct, and that all opinions expressed herein are in accordance with my sincere belief.

Executed on December 10, 2021, in Brussels, Belgium.



Prof. Albert Jan van den Berg