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The Hague Court of Appeal
Session on 24 September 2019
Cause-list number: 200.197.079/01

ORAL ARGUMENTS RE PUBLIC POLICY

PROFESSOR A.J. VAN DEN BERG

in the case of:

The **Russian Federation**, respondent,
original claimant in the setting aside
proceedings and defendant in the arbitrations

v.

Hulley Enterprises Limited, Veteran
Petroleum Limited and **Yukos Universal**
Limited, appellants, claimants in the
arbitrations (hereinafter: “**HVY**”)
counsel: M.A. Leijten and A.W.P. Marsman

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DISTINGUISHED MEMBERS OF THE COURT OF APPEAL,

I. VIOLATION OF DUTCH PUBLIC POLICY

1. This Court of Appeal must set aside the Yukos Awards based on Article 1065(1)(e) DCCP. The Tribunal has violated the parties' fundamental right to be heard, the right to equal treatment and to an impartial and independent Tribunal, as a result of which the Yukos Awards are contrary to public policy.¹
2. First, the Russian Federation was not given the opportunity to express its opinion on (a) the damages calculation method the Tribunal devised itself, and (b) the fact that the advice of the Competent Tax Authorities was not sought.²
3. Second, the Tribunal speculated on crucial decisions without being authorised to do so (*decision making by speculation*).³
4. Third, the Tribunal solely based decisions on its own views of what Russian law *should entail* instead of what Russian law *actually entails*.⁴
5. Fourth, the opinion on the value of the YNG shares is inherently contradictory to the Tribunal's own valuation of Yukos, whereas the Tribunal's decisions

¹ This overview does not include Public Policy Ground 6 (The Fraud of HVY in the Arbitrations requires that the Yukos Awards be set aside on the basis of public policy), Defence on Appeal, paras. 1195-1200, given this Court of Appeal's interim judgment of 25 September 2018.

² Defence on Appeal, paras. 1183-1186. Summons, paras. 432, 455, 465, 525 and 578.

³ Defence on Appeal, paras. 1187-1189. Summons, paras. 555-565.

⁴ Defence on Appeal, paras. 1190-1191. Summons, paras. 566-568.

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regarding the YNG auction are based on incorrect assumptions and impermissible speculation.⁵

6. Finally, as a result of fraud and corruption the enforcement of the Yukos Awards will result in the violation of public policy.⁶

II. OTHER POINTS

7. The Russian Federation has, in its written submissions, responded to numerous tendentious arguments in HVY's Statement of Appeal and the "Submission" of 26 February 2019.⁷ It is clear, however, that many of those allegations that have been raised in these submissions are irrelevant. I mention one example: HVY have extensively dwelled upon purported violations of criminal procedural law. These purported violations have nothing to do with the grounds for annulment. Their arguments relating thereto have already been rejected in your Interim Judgment of 25 September 2018.⁸ HVY have ignored that Interim Judgment, and have after that filed numerous submissions and exhibits on criminal procedure.⁹

III. CONCLUSION

8. This is a dispute between the Russian Oligarchs and the Russian Federation. These Russian Oligarchs have misappropriated state property by the

⁵ Defence on Appeal, paras. 1192-1194. Summons, paras. 569-573.

⁶ Defence on Appeal, paras. 1201-1206.

⁷ Defence on Appeal, paras. 1208-1241; RF's Submission, paras.427-458.

⁸ For example, HVY, in their 13 February 2018, para 11(iii), had extensively argued that there was a failure to prosecute. These, and many other arguments, were rejected in this paras. 3.3, 4.4.1 and 4.4.9 of the Interim Judgement.

⁹ See RF's Submission, paras. 414-418.

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manipulation of auctions and corruption. Subsequently, they engaged in a massive tax evasion. Now, the same Oligarchs are trying to abuse the Dutch judicial system to extract US\$ 50 billion (plus interest) from the Russian people.

9. The Russian Federation never agreed to the arbitration of this domestic public law dispute before an international tribunal. The Yukos Awards have therefore rightly been annulled. To that end, the District Court only had to address the very first ground of annulment. It saw no need to even consider the other deficiencies.
10. I conclude that the District Court's Judgment of 20 April 2016 should be affirmed:

That it may please this Court of Appeal, through a ruling provisionally enforceable insofar as possible:

- (a) to reject HVY's claims on appeal (also), or to reject its grounds as being unfounded, and to uphold the judgment of 20 April 2016 of the District Court in The Hague with case numbers / cause list numbers C/09/477160 / HA ZA 15-1 (case I), C/09/477162 / HA ZA 15-2 (case II), C/09/481619 / HA ZA 15-112 (case III), with an improvement or addition to the grounds for appeal if necessary;
- (b) to order HVY to pay the costs of the proceedings in both instances, plus the payable statutory interest as of the date of the ruling until the day of payment in full, and the usual subsequent costs.