**Deputy Justice Minister of the Russian Federation**

**M.Galperin’s Speech at the Dutch Supreme Court**

Honorable Judges!

1. I appreciate the opportunity to address you briefly today on behalf of the Russian Federation.
2. I am under no illusion that Russia can count on the favorable opinions of the European public these days. In different venues, the Russian Federation is being accused of aggressive actions, non-compliance with the standards of liberal Western democracy, and even involvement in the downing of civilian aircraft. But today’s case is not about attitudes toward Russia. It is not about politics and emotions, but about fundamental legal positions, which will define the shape of Dutch and international law for many years to come. I hope that this High Court will not fall under the influence of political considerations, and will focus only on the legal aspects of the cassation complaint.
3. Even in the most resonant cases, it is more straightforward to reach a decision, understanding that politics will change over time, and passions will subside, but legal principles must remain unchanged.
4. The claimants are requesting that you dismiss our complaint and, in this way, are asking you to punish Russia. But the approach that the Court will adopt today will matter not only for Russia and not only for the YUKOS case. This approach will be followed in hundreds of other cases, in which the Respondents will be different States, including the Netherlands and other States of the European Union. The YUKOS case is not just the largest case in the history of international investment arbitration from the perspective of the amount of compensation. The very future of investment arbitration in the Netherlands, Europe, and around the world depends on your decision. And, for the sake of the future of international arbitration, the Supreme Court should reject the claimants’ wrongful claims, as the District Court of The Hague did in 2016.
5. Our lawyers have just now raised a number of legal arguments, each of which requires the annulment of the ruling of the Court of Appeal of The Hague and the investment arbitration decisions under Dutch or European law. I will not burden you by repeating those arguments. We ask that you objectively evaluate them in the most attentive manner in the interests of impartial justice.
6. I am not a specialist in Dutch law, although, before becoming Deputy Minister of Justice, for many years I taught and practiced Russian and international law. I also represent Russia in the European Court of Human Rights and other international and foreign tribunals.
7. But one doesn’t need to be an experienced jurist to see the validity of our legal arguments. They are clear and understandable for the ordinary reasonable person.
8. First, the claimants’ demands are not only unlawful, but immoral. The claimants’ beneficial owners have already unjustly enriched themselves twice at the expense of the assets of YUKOS. The first time was in the mid-1990s, when they acquired YUKOS for a pittance by means of fraud and bribery. The second time was in the early 2000s, when they extracted billions of dollars from YUKOS by means of offshore schemes, as well as tax and corporate manipulations. Now they want to do it a third time—asking you to confirm the validity of collecting the unprecedented amount of US$ 57 billion from the Russian budget, depriving it of funds needed for the financing of social benefits, healthcare support, environmental protection, and the fulfilment of the State’s other obligations to 140 million citizens.
9. This amount was reduced by more than 20 times by even the European Court of Human Rights on a similar claim. At the same time, the European Court confirmed unanimously in 2011 that YUKOS was not subjected to discrimination or political persecution, and that the Russian authorities did not abuse their powers and never used them to destroy the company and seize its assets. At the same time, the European Court recognized that the management of YUKOS used illegal schemes for the evasion of taxes.
10. There is a clear understanding amongst the parties to the UN Convention Against Corruption that, if illegally obtained assets were transferred to companies created or controlled by the acquirers of the assets, then such companies do not have legal protections as *bona fide* third parties. The claimants are precisely such companies.
11. Second, the claimants are cynically abusing the right of recourse to international arbitration and the Dutch courts. They are not real foreign investors. This is an internal Russian tax dispute between Russian businessmen—acting through offshore companies—and the Russian tax authorities. The claimants are silent as to the fact that their claims were rejected many years ago by the competent Russian courts, including Russia’s Supreme Commercial Court and the Constitutional Court.
12. For all these years, the claimants have falsified evidence and knowingly misled the arbitration tribunal and the Dutch courts. At our request, these facts are being examined by the Dutch Prosecutor’s office.
13. Third, Russia never gave consent as a sovereign State to submit this dispute to arbitration. The Russian Constitutional Court recently confirmed that Russia could never provisionally apply arbitration clauses in an unratified international treaty. Their provisional application would violate the fundamental principles of separation of powers, parliamentarism, and the rule of law. Only an elected parliament can give consent to the jurisdiction of an international tribunal. These principles are derived from the European Convention for the Protection of Human Rights, from all European Constitutions, and the very foundations of a State subject to the rule of law. Moreover, long before this dispute was submitted for arbitration, it was known that the Russian parliament had refused to consider the draft law on the ratification of the Energy Charter Treaty. It was only through procedural tricks that this dispute came to be considered by the international arbitral tribunal and the Dutch court.

Respected Judges!

1. Before making a decision, you will need to answer a question: will investment arbitration be that which was once envisioned—an independent and predictable mechanism for the protection of *bona fide* and genuine foreign investment? Will this mechanism comply with the principles of democracy and the rule of law, or will it become an instrument for political pressure, blackmail, and the promotion of corruption, tax evasion, and money laundering? Will international treaties be interpreted in good faith and in accordance with the original meaning laid down by the States upon their signature?
2. If this High Court does not itself consider it possible to answer these questions and interpret the Energy Charter Treaty, we ask that a request be made to the Court of Justice of the European Union.
3. I believe that you will make a fair and just decision, consistent with the principles of Dutch, Russian, European, and international law. I hope that this case, which has lasted for 16 years, will finally be completed!

Thank you for your attention!