Yukos Awards Enforcement Proceedings – The Belgian Aspects (Part 4 – The Seizures)

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Last but not least, here's the fourth (and final) article devoted to the Belgian enforcement proceedings in the *Yukos* (***Yukos***) case.

As mentioned in previous posts, this last article is devoted to the proceedings in which Russia challenged the legality of seizures, carried out by *Yukos Universal Ltd* (***YUL***), of assets belonging to the Russian Federation or to State-related entities.

As explained before, YUL had initially obtained (in June 2015) the Belgian exequatur of the arbitral award which had been rendered in its favour in July 2014. Right after having obtained this exequatur, YUL seized bank accounts and real estate assets belonging to Russia which were located in Belgium. In addition, YUL also sought the seizure of Belgian assets belonging to two Russian press agencies (*ITAR TASS* and *Ria Novosti*) which it alleged constituted entities of the Russian Federation.

As explained in parts 2 and 3 of my Yukos reports, Russia – which was not a party to the initial exequatur proceedings – filed a third-party opposition against the exequatur order handed down by the Court of First Instance in Brussels.

In addition, in separate proceedings, Russia also filed another third-party opposition in which it challenged the legality of the seizures conducted by YUL. In opposing those seizures, Russia advanced three main arguments.

First of all, Russia argued (not surprisingly) that because the award rendered in YUL's favour had been annulled by the District Court of the Hague on 20 April 2016, the initial exequatur order of June 2015 (and the subsequent seizures) were made null and void.

In support of its position, Russia relied on a 1925 bilateral convention between Belgium and the Netherlands on (among other things) the recognition and enforcement of judgments and arbitral awards (the ***Belgium-Netherlands Convention***).

As you might recall, the Belgium-Netherlands Convention had already been examined earlier when we discussed YUL's inadmissibility objection against Russia's third-party opposition in proceedings seeking to annul the exequatur order of June 2015 (see here). In those previous discussions, Russia had claimed that the Belgium-Netherlands Convention did not apply to the recognition and enforcement of the arbitral award rendered in YUL's favour (because the Belgium-Netherlands Convention only applied to cases of a civil and commercial nature while the arbitral award was of a tax and expropriation nature). In the present proceedings, however, the Russian Federation now claimed that the Belgium-Netherlands Convention should apply to the recognition of the judgment of the District Court of the Hague of 20 April 2016.

Secondly, the Russian Federation argued that the assets seized by YUL (*i.e.* an annex-building to the Russian embassy; a piece of currently unbuilt land; and bank accounts (most of them providing a rental guarantee for Russian diplomats in Belgium) all enjoyed diplomatic immunity.

Thirdly, Russia argued that the documents allowing for the seizures had been served erroneously as YUL had wrongfully relied on the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (the ***Hague Service Convention***). According to Russia, YUL shouldn't have served the appropriate documents

through diplomatic channels in accordance with the Hague Service Convention but rather by post in accordance with the Belgian Judicial Code. Russia indeed argued that the Hague Service Convention did not apply to the case at hand as this convention only applied to cases of a civil or commercial nature while the present case was of a tax and expropriation nature.

In addition, Russia also argued that the formalities regarding the seizures were not properly fulfilled as – under Belgian law – the service of the order of exequatur should have contained a copy of the award and, in addition, a 15 days period should have elapsed between the service of the order and the seizure of real estates. Neither of these two conditions had been met in the case at hand.

YUL of course strongly contested those arguments and claimed that Article 26 (5) (b) of the Energy Charter Treaty (which served as the basis for establishing the arbitral tribunal's jurisdiction) explicitly provided that "[c]*laims submitted to arbitration* […] *shall be considered to arise out of a commercial relationship*". Consequently, all aspects regarding the recognition and enforcement stages of the July 2014 arbitral award should be conducted accordingly and the Hague Service Convention fully applied to the case at hand.

Above all, YUL believed (and argued) that the Court of First Instance should stay the proceedings pending the resolution of the proceedings to set aside the three Yukos awards in the Court of Appeal of the Hague.

Finally, it is worth noting that *ITAR TASS* and *Ria Novosti* (the two news press agencies) also made themselves heard in the case. They mainly argued that their legal personality differed from the Russian Federation and that their assets did not belong to Russia. According to them, YUL wrongly referred to Russian law (and the concept of unitary enterprise) to claim that they acted as state entities. Interestingly they even claimed that the bailiff who conducted the seizures committed gross negligence and asked the court to grant them EUR 10.000 in damages.

It is now time for the judges of the Court of First Instance in Brussels (and you) to digest all of those legal arguments. As mentioned before, the Court of First Instance in Brussels is expected to hand down its judgments in both the exequatur proceedings and the seizure proceedings in early 2017. It will be interesting to see what the court will say. The International Litigation Blog will of course keep you posted on any further developments.