IN THE NAME OF THE QUEEN!

Judgment

DISTRICT COURT OF AMSTERDAM

civil law division

case number / docket number: 355622 / HA ZA 06-3612

Judgment dated 31 October 2007

in the case of

1. **David Andrew GODFREY**,
   resident in London (United Kingdom),
2. **Bruce Kelvern MISAMORE**,
   resident in Houston, Texas (United States of America),
3. the private company with limited liability
   YUKOS FINANCE B.V.,
   with registered seat in Amsterdam,

c l a i m a n t s ,
procurator *litis*: *mr.* R.J. van Galen

versus

1. **Eduard Konstantinovich REBGUN**, in his capacity of receiver in the bankruptcy of the legal entity under the law of the Russian Federation
   OAO YUKOS OIL COMPANY,
   having chosen domicile at Rotterdam,
2. **Leendert Jacob HOGERBRUGGE**,
   resident in Leiden,
3. **Sergei Savelyevich SHMELKOV**,
   resident in Moscow (Russian Federation),

defendants,
procurator *litis*: *mr.* P.N. van Regteren Altena

Claimants jointly hereinafter to be called Godfrey *et al.* and separately Godfrey, Misamore and Yukos Finance. Defendants jointly hereinafter to be called Rebgun *et al.* and separately Rebgun, Hogerbrugge and Shmelkov. OAO Yukos Oil Company hereinafter to be called Yukos Oil.

The proceedings

The course of the proceedings is apparent from:

- the writ of summons;
- the bailiff's notification in pursuance of section 126 of the Dutch Code of Civil Procedure served at the request of Rebgun *et al.* on Godfrey *et al.* on 31 October 2006;
- the amended bailiff's notification served at the request of Rebgun *et al.* on Godfrey *et al.* on 1 November 2006;
- the document containing exhibits, with exhibits, of Godfrey *et al.*;
- the statement of defence, with exhibits;
- the document containing exhibits, with exhibits, of Rebgun *et al.*;
- the statement of reply, with exhibits;
- the statement of rejoinder;
- counsels' pleadings and the documents submitted on that occasion.

Judgment was scheduled in the end.

The facts

As put forward on one side and acknowledged or at any rate insufficiently refuted by the other side, as well as on grounds of the submitted exhibits insofar as undisputed, the following are established facts in this case.

The Yukos group

1.1. Yukos Oil, which is established in the Russian Federation, was incorporated by the Russian State in 1993. It was privatised in 1995 and 1996.

1.2. Yukos Oil holds all the shares in Yukos Finance. Stichting Administratiekantoor Yukos International (hereinafter: the AK Foundation) holds all the shares in Yukos International UK B.V. (hereinafter: Yukos International), which in its turn holds shares in other companies. Yukos Finance is holder of all the depositary receipts for shares in Yukos International issued by the AK Foundation.

1.3. In the years 1995 to 2003 inclusive the Yukos group experienced considerable growth. It became the owner of considerable oil and gas reserves, pipelines and refineries.

The Russian tax proceedings

1.4. After an extensive tax audit, the Russian *Ministry of Taxes and Duties of Russian Federation on Major Taxpayers* (hereinafter: the Russian Tax Authorities) concluded in a report in April 2003 that Yukos Oil had a relatively small additional tax debt over the years 2000 and 2001. Yukos Oil paid the additional tax assessment in question a few months later.

1.5. On 19 September 2003 and 23 October 2003 the Russian Tax Authorities issued so-called '*Certificates of Absence of Unsettled Liabilities on Taxes and Other Compulsory Payments and Tax Violations*' to Yukos Oil. In these certificates, it is stated that by 1 September 2003 and 1 October 2003, respectively, Yukos Oil "*has no unsettled liabilities on taxes and other compulsory payments and no violations of the tax legislation*". On 17 November 2003 the Russian Tax Authorities issued a certificate to Yukos in which it is stated that there are no tax arrears as of 1 November 2003.

1.6. On 8 December 2003 the Russian Tax Authorities announced that it would conduct a re-audit. Subsequently, the Russian Tax Authorities concluded in a report of 29 December 2003 that Yukos Oil had paid too little tax for the year 2000, in the amount of RUR79.6 billion (approx. EUR 2.27 billion).

1.7. On 14 April 2004 the Russian Tax Authorities imposed on Yukos Oil additional tax assessments for the year 2000 amounting to RUR 99,375,538,234 (approx. EUR 2.9

billion), including interest and fines. The Russian Tax Authorities ordered Yukos Oil to pay this sum within two days.

1.8. On 15 April 2004 the Russian Tax Authorities submitted two applications to the tax court at Moscow (hereinafter: the tax court): (i) an application for a judgment ordering Yukos Oil to pay the additional tax assessments in the amount of RUR 99,372,538,234 to the Russian State and (ii) an application for an injunction based on which Yukos Oil would be forbidden to alienate and encumber its property, with the exception of raw materials and liquid assets (hereinafter: the freezing order).

1.9. The freezing order was granted the same day. For the treatment of the first application, a hearing of the tax court was held from 21 May up to and including 26 May 2004. On 14 May 2004 Yukos Oil requested that the hearing be postponed. That request was refused. For the benefit of the hearing in court the Russian Tax Authorities submitted 24,000 pages in exhibits on 17 May 2004, another 45,000 pages on 18 May 2004 and another 2,000 pages on 18 May 2004. These documents were handed to the representatives of Yukos Oil unordered and unnumbered, in about 60 open cardboard cucumber crates. On 19 May 2004 Yukos Oil submitted a second request for postponement of the hearing. That request was rejected.

1.10. On the occasion of the hearing in court the Russian Tax Authorities gave the tax court a composed, ordered and numbered file. Yukos Oil was not given a copy of that file. During the hearing in court, both the tax court and the Russian Tax Authorities referred to the documents included in the ordered file, the document in question being shown to the representatives of Yukos Oil by the tax court. After repeated protests of its representatives Yukos Oil was given the opportunity by the tax court to inspect the ordered file during the 30-minute lunch breaks on the days of the hearing.

1.11. In its judgment of 1 June 2004 the tax court awarded the Russian Tax Authorities' claim for the largest part. The Russian Tax Authorities immediately lodged an appeal against the judgment. The tax appeals court heard the case on 18 June 2004. Yukos Oil's request for a postponement was refused. The tax appeals court granted the claim of the Russian Tax Authorities by its ruling of 29 July 2004, to a sum of RUR 99.4 billion. The appeal in cassation instituted by Yukos Oil was dismissed on 10 September 2004.

1.12. On 14 July 2004 the Russian tax bailiff, to recover the claim regarding the additional tax assessments awarded by the tax court, attached the shares held by Yukos Oil in OAO Oil Company Yuganskneftegaz (hereinafter: Yuganskneftegaz), which was responsible for 60% of the oil production of the Yukos group at the time. In a report published by Dresdner Kleinwort Wasserstein at the instruction of the Russian State, dated 6 October 2004, the share capital of Yuganskneftegaz was valued at USD 15.7 to 18.3 billion. In a report published by JP Morgan by order of Yukos Oil, dated 27 October 2004, the share capital of Yuganskneftegaz was valued at USD 16.1 to 22.1 billion.

1.13. On 18 November 2004 the tax bailiff announced that the attached shares in Yuganskneftegaz would be sold in a public auction. The auction took place on 19 December 2004. The opening bid was set at USD 8.65 billion. At the auction, only the Baikal Finance Group, with registered seat in Tver (Russian Federation) made a bid, of USD 8.65 billion (EUR 7 billion). The shares in Yuganskneftegaz were sold to the Baikal Finance Group for that amount.
Shortly thereafter OAO Rosneft Oil Company (hereinafter: Rosneft), a Russian state enterprise, obtained all the shares in Baikal Finance Group. Yuganskneftegaz is Rosneft's most important asset.

1.14. In addition, the Russian Tax Authorities imposed additional assessments for the years 2001, 2002, 2003 and 2004 on Yukos Oil, to a total amount of 692 billion Roubles (EUR 20.1 billion). In the Russian Federation, besides the above-mentioned proceedings, Yukos Oil instituted proceedings against the additional tax assessments, the freezing orders and the seizure and enforcement orders. These did not lead to a substantial reduction of the additional tax assessments imposed, nor to a lifting of the freezing orders or the seizure and enforcement orders.

1.15. After the first additional tax assessments had been imposed in April 2004 Yukos Oil instituted proceedings before the European Court of Human Rights based on a violation of its rights under article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and article 1 of the First Protocol to the ECHR.

1.16. The presentation letter of P. Gardner, counsel for Yukos Oil, to the European Court dated 23 April 2004 contains, insofar as is relevant here, the following:

I am instructed by Yukos Oil Company to lodge an application under Article 34 of the European Convention on Human Rights with the European Court of Human Rights against the Russian Federation and to request its immediate registration. (...)
The application concerns the Company's right to the peaceful enjoyment of its possessions and to effective domestic remedies and is urgent.
It arises in the context of a decision on 14 April 2004 by the Russian Tax Ministry to issue orders to pay tax, penalty interest and fines totalling over RUR 99 Billion (approximately Euro 2.9 Billion). The obligations created by those order to pay (which are unlawful and disputed) were secured against the Company by an injunction granted by the Moscow Court of Arbitration on 15 April 2004; that injunction forbids the Company from "alienating, (sic) encumbering in any way its property". However, the orders to pay are enforceable by executive act of the Tax Ministry. The present application concerns the risk that such execution will be sought, the consequences for the company and the lack of available and effective domestic remedies.

The Russian insolvency proceedings

1.17. In 2004, on account of credit provided to it, Yukos Oil owed a sum of around USD 480 million to a consortium of international banks (hereinafter: the consortium). As a result of the non-payment by Yukos Oil in 2004 this claim became due and payable in its entirety. By agreement of 13 December 2005 the consortium sold its claim on Yukos Oil, which had thus become due and payable, to Rosneft. In as far as is relevant here, article 3.1 of said agreement – in which the consortium is designated as *the Sellers* - is as follows:

The Sellers jointly agree that in the period on and from the date of this Agreement to and including the Settlement Date they shall by taking the steps described in Schedule 8, endeavour to file and have accepted the Application for Bankruptcy (...) as soon as is reasonably practicable following the date of this Agreement (...).

1.18. On 6 March 2006 the consortium submitted an application to the Arbitrazh court in Moscow (hereinafter: the arbitrazh court) to open Russian insolvency proceedings in regard to Yukos Oil. On 14 March 2006 the consortium assigned its claim on Yukos Oil to Rosneft.

1.19. By its judgment of 28 March 2006 the arbitrazh court declared so-called "supervision proceedings" applicable to Yukos Oil. In so far as is relevant here the judgment, in English translation, provides as follows:

The Moscow Arbitrazh Court

Has established the following: In its ruling dated March 9, 2006 the Moscow arbitrazh court acknowledged the petition of bankruptcy creditors for bankruptcy of OAO "Oil Company 'YUKOS'", initiated the proceeding (...).
In the ruling dated March 28, 2006 bankruptcy creditors in OAO "Oil Company 'YUKOS'" bankruptcy proceedings were replaced by "NK 'Rosneft'".

In the present session the court shall review the justness of the applicant claims towards the debtor and whether to initiate the supervision procedure.

The debtor counterpleads initiation of the supervision procedure, considers applicants claims unjustified and applies to court to reject the supervision procedure and close a case.

After hearing the persons participating in the case, studying the case papers, presented documents, the court came to a conclusion that the applicants claims shall be deemed justified, to initiate a supervision procedure in respect of the debtor and as the claim has been approved by the effective ruling of the Moscow Arbitrazh Court dated December 21, 2005, not changed by the ruling of the federal Arbitrazh Court of the Moscow Circuit dated March 2, 2006.
(...)
Therefore the debt in amount of 472,787,663.10 and interest in amount of 9,459,143.18 Dollars, that is equal to 12,711,846,886.77 Rubles and 264,198,598.58 Rubles respectively at the rate as of March 6, 2006 (bankruptcy petition filing date).

The debtor did not presented evidences with respect to settlement of the aforesaid amount.

THE COURT HAS RULED

To justify the claims of OAO "NK 'Rosneft'" against OAO "Oil Company 'YUKOS'".
To initiate the supervision procedure in respect of OAO "Oil Company 'YUKOS'".
To incorporate a claim of OAO "NK 'Rosneft'" amounting to 12,711,846,886.77 Rubles and 264,198,598.58 Rubles in the register of creditors claims of the third line.

To approve Rebgun Eduard Konstantinovich (...) as a temporary receiver of OAO "Oil Company 'YUKOS'" (...).

1.20. On 20 and 25 July 2006 the first meeting of creditors in the supervision proceedings took place. As evidenced by the report of that meeting, at the time a total of RUR 258,841,581,080 in vote-entitling debts was included in the list of admitted creditors. Creditors representing RUR 257,878,766,984 were represented at the meeting. Approximately RUR 242.97 billion of this total sum comprised claims of the Russian Federal Tax Authorities (RUR 135.31 billion), Rosneft (RUR 12.98 billion) and Yuganskneftegaz (RUR 94.68 billion).
At the creditors' meeting, a financial rehabilitation plan proposed by Yukos Oil was presented.
In so far as is relevant here the report of the creditor's meeting, in English translation, contains the following:

*"**The item put to the vote**: To take a decision on implementing the financial rehabilitation procedure (...)*
"FOR": 16 ballots comprising 14,567,863,594 votes (...)
"AGAINST": 4 ballots comprising of 242,983,738,682 votes (...)
"ABSTAINED": 3 ballots comprising 306,523,672 votes (...)
(...)
***The item put to the vote**: To issue a decision on filing a petition with an arbitrazh court to acknowledge the debtor a bankrupt and to initiate the relevant bankruptcy proceedings (...)*
"FOR": 4 ballots comprising of 242,977,843,105 votes (...)
"AGAINST": 15 ballots comprising 14,564,992,054 votes (...)
"ABSTAINED": 4 ballots comprising 315,290,789 votes (...)

The Russian Federal Tax Authorities, Rosneft, Yuganskneftegaz and one minor creditor voted in favour of the bankruptcy application and against the implementation of the financial rehabilitation plan voted.

1.21. In as far as is relevant here, a decision of the arbitrazh court dated 1 August 2006, recorded in its judgment of 4 August 2006, in English translation provides the following:

The Moscow Arbitrazh Court (...)
Having considered in the court hearing the bankruptcy case of OAO "YUKOS Oil Company".

With the following persons attending the court hearing:
Representatives of the Federal Tax Service of Russia: (...)
Representatives of the Interim Receiver of the Debtor (OAO "YUKOS Oil Company"): (...)
Representatives of the Debtor (OAO "YUKOS Oil Company"): (...).

Has established the following: In its ruling dated March 9, 2006, the Moscow Arbitrazh Court has accepted for consideration the petition filed by bankruptcy creditors seeking to acknowledge OAO "YUKOS Oil Company" bankrupt (...).
By the ruling dated March 28, 2006, the Moscow Arbitrazh Court has introduced the supervision procedure with respect to the Debtor and has appointed Mr. E.K. Rebgun as Interim Receiver [of the Debtor].
(...)
In his progress report, the Interim Receiver explained that on the basis of the financial analysis included in the case file, he believed that the activities of OAO "YUKOS Oil Company" became uneconomic in 2003, which fact is reflected in the company's balance sheet reports. Wholesale trade in oil, which ensured one third of revenues of OAO "YUKOS Oil Company", stopped in 2004.
(...)
On July 20, 2006, the Interim Receiver conducted the creditors' meeting, and the meeting decided to file a petition with the court seeking to acknowledge the Debtor a bankrupt and to implement the receivership procedure against the Debtor.

A representative of the Debtor raised objections, did not accept that the Debtor should be acknowledged a bankrupt, and explained that the debtor was able to repay the existing indebtedness and that the Interim Receiver incorrectly estimated the debtor's assets.

Having heard the opinion of the participants in the case, and having reviewed the case materials and the documents submitted, the court has established that the debtor has signs of bankruptcy as determined in Article 3 of the Federal Law "On Insolvency (Bankruptcy)", namely: the debtor had failed to satisfy the creditors' monetary claims within three months after the due date.

It follows from the Protocol of the 1st creditors' meeting of OAO "YUKOS Oil Company" dated July 20-25, 2006, that the meeting was attended by 24 participants in the meeting, which constituted 99,61% of the total number of votes of creditors and authorized bodies, as well as by representatives and employees of the Debtor.

The said meeting, by a majority vote of the creditors, decided not to file a petition with the arbitrazh court on implementing the financial rehabilitation procedure with respect to the Debtor; (...) and to file a petition with the arbitrazh court seeking to acknowledge the Debtor a bankrupt and to initiate the relevant receivership proceedings with respect to the Debtor.

(...)

The creditors' meeting decided to approve Interim Receiver of OAO "YUKOS Oil Company" Mr. E.K. Rebgun as the Receiver of the Debtor, OAO "YUKOS Oil Company".(...)

HAS RESOLVED:

To acknowledge OAO "YUKOS Oil Company" bankrupt.

To initiate the receivership proceedings with respect to the Debtor, OAO "YUKOS Oil Company", for a term of one year.

(...)

To approve Mr. Eduard Konstantinovich Rebgun (...) as the Receiver of OAO "YUKOS Oil Company" (...)

(...)

To terminate the powers of the head of the Debtor and other management bodies of the Debtor, except for the powers of the Debtor's management bodies authorized, on the basis of the Debtor's foundation documents, to take decisions on entering into major transactions and on entering into agreements setting forth the terms and conditions of granting monetary funds by a third party of third parties for the purpose of fulfilling the Debtor's obligations.

(...)

This Resolution may be appealed in the appellate instance of the arbitrazh court (the 9th Arbitrazh Appellate Court) within one (1) month of its issuance in full, and in the cassation instance of the arbitrazh court (the Federal Arbitrazh Court of the Moscow Circuit) within a time period not exceeding two (2) months from the date the appealed judicial act enters into legal force.

1.22. Yukos Oil appealed against the decision of the arbitrazh court. After counsel for Yukos Oil had submitted a Notice on Appeal Rebgun withdrew the powers of attorney that Yukos Oil had granted its counsel to represent it in the appeal proceedings.

1.23. In so far as is relevant here, the decision of the ninth arbitrazh appeals court at Moscow (hereinafter: the appeals court) of 19 September 2006 as recorded in its ruling dated 26 September 2006, in English translation, is as follows:

The Ninth Arbitrazh Appellate Court

(...)

Having considered the appeal filed by OAO "Oil Company 'Yukos'"
against the Decision of the Arbitrazh Court of the City of Moscow, dated August 4, 2006, seeking to acknowledge the debtor bankrupt and to iniate in its respect bankruptcy proceedings in case No. (...) on the insolvency of OAO "Oil Company 'Yukos,'"

With the following representatives participating in the hearing:
(...) – on behalf of the Interim Receiver,
(...), on behalf of OAO "Oil Company 'Rosneft,'" and
(...) – on behalf of the meeting of creditors of OAO "Oil Company 'Yukos,'"

ESTABLISHED:
In accordance with the Decision of the Arbitrazh Court of the City of Moscow, dated August 4, 2006, the OAO "Oil Company 'Yukos'" was acknowledged bankrupt, bankruptcy proceedings were initiated in its respect, the receiver was approved and it was resolved to terminate the authority of the head and other management bodies of the debtor.

OAO "Oil Company 'Yukos'" disagreed with the adopted decision, considering that it has been adopted in violation of the norms of substantive and procedural law, and applied to the Ninth Arbitrazh Appellate Court with an appeal in which it seeks to have the decision cancelled in its entirety and to have a new judgment issued.

The plaintiff indicated that the appealed judicial act incurs dismissal of the debtor's management and compulsory alienation of its property, which contradicts national legislation of Russia and does not comply with the requirement of the quality of Law established by the Convention on the Protection of Human Rights and Fundamental Freedoms, and represents interference into the rights to respect private property. In the debtor's opinion, there were no grounds to make a conclusion about the negative balance between its liabilities and the cost of assets and, as a consequence, the debtor's inability to satisfy creditors' claims. Additional tax liability asserted in accordance with the results of tax audits for 2000-2003 was based on an unpredictable new interpretation of tax legislation which, in the sense of the Convention, does not comply with the requirement of the legality. In addition, the Plaintiff specifies that the court of the first (trial) instance, by its ruling of August 4, 2006, illegally rejected the motion on the suspension of the proceedings in the case until the debtor's complaint is considered by the European Court. This circumstance, in the opinion of the plaintiff, caused, by virtue of Paragraph 1, Article 52 and Paragraph 2, Article 58 of the Federal Law "On Insolvency (Bankruptcy)" the issuance of the incorrect indecision, since the establishment of the signs of bankruptcy depends on the legality and reasonability of creditors' claims.

OAO "Oil Company 'Yukos,'" duly notified of the time and place of consideration of the appeal, failed to ensure the appearance of its representative in the appellate court. Under such circumstances the appellate court considers it possible to consider the case in the absence of representatives of the above-mentioned persons, according to Articles 123 and 156 of the RF Arbitrazh Procedure Code ("RF APC").

(...)

Having reviewed materials of the case, having discussed the arguments of the appeal, having heard representatives of the participants in the case and having verified the legality of the appealed judicial act under the procedure set forth by Chapter 34 of the RF Arbitrazh Procedure Code, the Ninth Arbitrazh Appellate Court came to a conclusion that there were no grounds for cancelling decision of the first (trial) court.

(...)

By the majority of votes of creditors in bankruptcy at the above-mentioned meeting the following decisions were adopted: not to apply to an arbitrazh court with a motion to introduce a financial rehabilitation procedure with respect to the debtor; not to apply to the arbitrazh court with a motion to introduce external management procedure with respect to the debtor; to file a motion with the court to acknowledge the debtor bankrupt and to introduce in its respect bankruptcy proceedings.

(...)

In accordance with Paragraph 1, Article 75 of the Federal Law "On Insolvency (Bankruptcy)," bankruptcy proceedings shall be opened by the arbitrazh court on the basis of a decision of the first creditors' meetings in the absence of the grounds for introducing financial rehabilitation and external management procedures.

(...)

The court of the appellate instance considers that arguments of the appeal are groundless, since, on their merits, they lack reasonable grounds for canceling the disputed decision.

Among one of the arguments in support of the cancellation of the disputed decision the plaintiff specified the acceptance of its complaints by the European Court, which sets forth the grounds for acknowledging of the illegality the debtor's indebtedness to the Russian Federation due to the violation thereby of the rights and fundamental freedoms of OAO "Oil Company 'Yukos'" in the form of an arbitrary accrual thereon of tax liabilities, illegal alienation, in favor of the company owned by the RF, of the main production asset of the debtor at an extremely underestimated price, and the adoption, in the course of enforcement proceedings, of unreasonable and inadequate measures in the form of the arrest of the entire debtor's property.

In the interim, the plaintiff, specifying such circumstances, failed to provide, neither to the court of the first (trial) instance, nor to the court of the appellate instance, evidence of the submittal of the

claim to the European Court, as well as evidence of its acceptance. No evidence has been presented on the assignment to the complaint, as has been specified by the plaintiff (appellant), of the priority in accordance with Rule 41 of the Procedural Rules of the European Court of Human Rights and of its transfer to the First Section of the Court.

The absence of the above-mentioned evidence made, in fact, impossible to consider the debtor's argument of the necessity to suspend proceedings in the case prior to the adoption of a decision by the European Court. The non-provision of this evidence to the court of the appellate instance also confirms the reasonability of actions of the court of the first (trial) instance to adopt a decision in the case without suspending the corresponding proceedings.

Arguments set forth by the debtor with respect to the allegedly illegal acknowledgement of its indebtedness to the Russian Federation lack legal and evidentiary basis, and are, in essence, groundless statements aimed at the revaluation of circumstances of the violation thereby of tax liability already established in respect of the debtor.

Without disputing arguments of the appeal on the binding character of decisions of the European Court of Human Rights for the Russian Federation, in the opinion of the court of the appellate instance, as regards the adoption of the disputed decision there are no legal grounds to consider that the Russian Federation and the Arbitrazh Court of the City of Moscow violated the norms of either national or international law.

The plaintiff's argument that its rights have been violated by the dismissal of the debtor's management and compulsory alienation of its property may not contradict the European Convention for the Protection of Human Rights and Fundamental Freedoms, since this international act contemplates protection of the groundless and illegally violated rights of its beneficiaries.

As follows from the materials of this case, judicial acts confirmed prolonged violation by the debtor of tax legislation, in connection with which he was held liable for deferred payments several times. This fact was established, including by the ruling adopted by the court of the first instance, and by the resolution of the appellate instance in the course of the consideration of the request of the RF Federal Tax Service to include it in the register of claims of Yukos' creditors. The fact that most part of claims included in the register of the debtor's creditors is asserted by the Russian Federation, is not a unique peculiarity of this case, but reflects the actual relationship between a taxpayer that violated its public duty and the State.

The violation by the debtor of the tax liability provided by legislation, and, as a result, the occurrence of consequences provided by laws, including the Tax Code of the RF and the Federal Law "On

Insolvency (Bankruptcy)," may not be rendered as illegal interference into private affairs of the debtor and may not evidence about the violation of its title to the property in its possession.

The Tax Code of the RF is binding for all persons by virtue of the obligation, provided in Article 57 of the RF Constitution, for all persons to pay taxes and charges established by law.

Moreover, in accordance with Article 19 of the Constitution, all persons are equal before the law and court. The state must guarantee the equality of rights and freedoms of a human being and a citizen irrespective of his/her sex, race, nationality, language, origin, proprietary and other position.

The debtor failed to prove that tax claims brought against it contradict Russian law, violate principles of Constitution on the equal approach to it by the law and court.

Arguments of the appeal alleging violation of the principle of legality in the issuance of the disputed judicial act may not be deemed valid, since the debtor failed to specify violations of the norms of substantive law considering that these laws do not comply with the criteria of accessibility and legality in the sense of the Convention. Such argument does not comply with the requirements of the RF APC providing, as the basis for the cancellation of the disputed act, an indication to its incompliance with the specific norms of procedural or substantive law, and not with the sense of specific principles mentioned by the debtor.

The lack of evidentiary support to the arguments of the appeal on the merits may not provide the basis for the cancellation of the legal and reasonable decision issued by the court of the first (trial) instance.
(...)
RESOLVED:
To leave standing decision of the Arbitrazh Court of the City of Moscow, dated August 4, 2006, in case No. A40-11836/06-88-35Б, and to reject the appeal.

1.24. No appeal in cassation was instituted on behalf of Yukos Oil.

The board of Yukos Finance

1.25. To the extent that this is relevant here, a Power of Attorney dated 8 August 2006 from Rebgun to *mr.* G.H. Gispen, his Dutch counsel, reads as follows:

POWER OF ATTORNEY

Receiver of the Open Joint Stock Company "YUKOS Oil Company" (the "Company") (...), EDUARD KONSTANTINOVICH REBGUN (...) (the "Grantor"), does hereby make and constitute:

- *Mr. Gerhard H. Gispen;*

(...)

Acting jointly or severally, as its true and lawful Attorneys-in-fact of the Company, with full power and authority to act, as herein described, in the name and on behalf of the Company as follows:

1. *To exercise all rights attached to the shares that the Grantor holds in Yukos Finance B.V. (...), including but not limited to, the right to convene and attend an (extraordinary) general meeting of shareholders in which the dismissal with immediate effect of Mr. David Andrew Godfrey and Mr. Bruce Kelvern Misamore as managing directors of Yukos Finance B.V. will be discussed and to vote in favour of this dismissal as a result of which the employment contracts of Mr. David Andrew Godfrey and Mr. Bruce Kelvern Misamore also will be terminated.*
2. *To execute all such documents and to do all such other things as may, at the sole and absolute discretion of the Attorney (Attorneys), be required to be signed, executed or delivered by the Company, or done by the Company in connection with this power of attorney or be appropriate or necessary for effectively or expeditiously carrying out the objects herein authorised.*
3. *To appoint any substitute (substitutes) for any and all of the above purposes and to revoke such appointment at pleasure.*
4. *This power of attorney is governed by and shall be construed in accordance with Netherlands law, to the fullest extent permissible*

1.26. In so far as is relevant here, a Shareholders' Resolution of Yukos Finance dated 11 August 2006 reads:

Shareholder's resolution

The undersigned:

Gerhard Hendrik Gispen, attorney if fact, appointed by Mr E.K. Rebgun, in his capacity as court appointed insolvency office holder of the Open Joint Stock Company Yukos Oil Company (the "Shareholder") (...)

WHEREAS:

(A) the Shareholder is the holder of the entire issued and outstanding capital of Yukos Finance B.V. (the "Company"), (...);
(...)
(D) pursuant to the provisions of article 20 of the articles of association of the Company, resolutions can be adopted outside a meeting;
(E) the Board of Management of the Company has been consulted of the decision to be taken and has approved thereof,

HEREBY RESOLVES:

to dismiss (ontslaan) David Andrew Godfrey and Bruce Kelvern Misamore as Managing Directors (statutair bestuurders) of the Company with immediate effect as a result of which their employment with the Company, if any, will terminate all under the terms as stated by Mr Gispen and as recorded by Mr Jan-Mathijs Hermans, civil law notary in Rotterdam, the Netherlands, on this date at 16:43 hours

1.27. By letter of 20 August 2006 *nr.* Van Galen on behalf of Godfrey and Misamore invoked the nullity and/or nullification of the Shareholders' Resolution dated 11 August 2006.

1.28. By Shareholders' Resolutions of 14 August 2006 and 30 August 2006 taken by Rebgun on behalf of Yukos Oil, Shmelkov and Hogerbrugge were respectively appointed directors of Yukos Finance.

The claim

2.1. Godfrey *et al.* claim, in a judgment having immediate effect:

principally:

1. to render a declaratory judgment that all shareholders' resolutions taken with regard to Yukos Finance, to the extent that they were taken by Rebgun in his capacity as receiver for Yukos Oil or by mr. Gispen, including but not restricted to the resolution of 11 August 2006 to dismiss Godfrey and Misamore as directors of Yukos Finance B.V., as well as the disputed resolution to appoint Shmelkov and Hogerbrugge as directors of Yukos Finance, are null and void;

2. to render a declaratory judgment that all decisions taken by Shmelkov and/or Hogerbrugge in their alleged capacity as directors of Yukos Finance B.V. are null and void.

alternatively:

1. to quash all shareholders' resolutions relating to Yukos Finance, insofar as they were made by Rebgun in his capacity as receiver of Yukos Oil or by *mr.* Gispen, including but not restricted to the resolution of 11 August 2006 to dismiss Godfrey and Misamore as directors of Yukos Finance B.V., as well as the disputed resolutions to appoint Shmelkov and Hogerbrugge as directors of Yukos Finance;
2. to quash all the decisions taken by Shmelkov and/or Hogerbrugge in their alleged capacity as directors of Yukos Finance.

both principally and alternatively:

3. to order Rebgun to lend his immediate and unconditional cooperation to the reversal of the shareholders' resolutions he made in Yukos Finance and of their consequences, subject to a penalty of EUR 5,000,000 for each individual violation and of EUR 500,000 for each day that violation continues;
4. furthermore, to prohibit Rebgun from exercising any rights with respect to the shares of Yukos Finance or from having these rights exercised, subject to a penalty of EUR 5,000,000 for each individual violation and of EUR 500,000 for each day that violation continues;
5. to order Shmelkov and Hogerbrugge, both jointly and severally, to lend their immediate and unconditional cooperation to the reversal of the managerial decisions taken whether individually or jointly, in Yukos Finance and of their consequences,

subject to a penalty of EUR 5,000,000 for each individual violation and of EUR 500,000 for each day that violation continues;

6. furthermore, to prohibit Shmelkov and Hogerbrugge from exercising any rights with respect to their alleged representative authority in Yukos Finance or from having these rights exercised, subject to a penalty of EUR 5,000,000 for each individual violation and of EUR 500,000 for each day that violation continues;
7. to order Rebgun, Shmelkov and Hogerbrugge jointly and severally to pay the costs of these proceedings and, moreover to order Shmelkov to pay the costs incurred in connection with the Russian translation of this writ and any costs of service/hand delivery of this summons in the Russian Federation

2.2 Succinctly put, Godfrey *et al.* first of all base this on their assertion that the resolution by which Godfrey and Misamore were dismissed is null and void since that resolution was taken by *mr.* Gispen, whereas *mr.* Gispen is not a shareholder of Yukos Finance.

2.3 Further they argue that, if that resolution should indeed be deemed to have been taken by Rebgun, Rebgun had no authority to do this since under Dutch international private law, the shares of Yukos Finance do not fall under the estate of Yukos Oil, so that Rebgun is not entitled to exercise the voting rights on those shares, or at least because the principle of territoriality implies that a Russian receiver cannot take a legally valid shareholders' resolutions in relation to Yukos Finance shares located in the Netherlands. The same applies to the shareholders' resolutions that were taken afterwards, which include, in any case, the resolutions by which Shmelkov and Hogerbrugge were appointed as directors.

2.4 If the District Court should be of the opinion that the principle of territoriality does not impede Rebgun's exercise of voting rights, the bankruptcy of Yukos Oil, in view of the course of affairs that preceded it and the manner in which it was effected, is in violation of public order and cannot be recognised in the Netherlands for that reason. After all:
- unlawful tax assessments in the amount of many billions of dollars were imposed, which furthermore had to be paid within two days and comprised over 100% of the turnover;
- other oil companies that deployed the same tax facility as Yukos Oil were not assessed, which renders the tax assessments arbitrary;
- Yukos Oil was denied a fair trial with regard to these tax assessments;

- because of the freezing orders it was impossible for Yukos Oil to pay the alleged debts whereas the Russian State rejected all offers made by Yukos Oil to sell assets to pay the alleged debts;
- the crown jewel Yuganskneftegaz was auctioned off (or rather: expropriated) for a purchase price well below its market value, at an auction where a front man for Rosneft was the only bidder, since Western bidders were discouraged from placing their bids;
- the bankruptcy of Yukos Oil was declared even though Yukos Oil had more assets than debts;
- a rehabilitation plan in which all of the creditors were to be paid in full was rejected exclusively based on the fact that the three faces of the Russian government (Rosneft, Yuganskneftegaz and the Russian Federal Tax Authorities) voted against the plan, whereas the claim of the tax authorities does not exist and the claim of Yuganskneftegaz against the Yukos concern was unlawfully snatched away from her. Virtually all other creditors voted against the bankruptcy; moreover, other important creditors like Moravel and Yukos Capital were not admitted to the vote;
- Rosneft, Yuganskneftegaz and the Russian Federal Tax Authorities adopted the resolution to let Yukos Oil go bankrupt.

Since the bankruptcy of Yukos Oil cannot be recognized in the Netherlands, Rebgun's alleged authority should not be recognised either. This means that, regardless of the question whether or not Rebgun is entitled to any right with regard to the shares in Yukos Finance including voting rights under Russian bankruptcy law, he is in any case not entitled to them under Dutch law. Therefore, all his decisions were taken without authority, are therefore in violation of the law, and for that reason are null and void pursuant to the provisions in Book 2 Section 14 of the Dutch Civil Code.

2.5. In addition to this, the decisions are null and void pursuant to Book 3, Section 40, of the Dutch Civil Code because the legal acts in question resulted from the bankruptcy of Yukos Oil, which was brought about in violation of Dutch and international public order. Moreover, the decisions are contrary to public morality since they were inspired by objectionable motives and focused in whole or in part on sidelining the legitimate creditors of Yukos Oil.

2.6. To the extent that the District Court should nonetheless rule that the contested decisions are not null and void, they are in any case voidable in pursuance of Book 2,

Section 15, subsection 1 under b of the Dutch Civil Code since they are in conflict with the reasonableness and fairness required in Book 2, Section 8, of the Dutch Civil Code; in this case, Godfrey *et al.* demand that the decisions be quashed, still according to Godfrey *et al.*

The defence

2.8. Rebgun *et al.* put forward a substantiated defence. In as far as this is required in the framework of the assessment of the District Court this defence will be further discussed below.

The assessment

3.1. The District Court is of the opinion that the power of attorney mentioned hereinbefore under 1.25 adequately demonstrates that *mr.* Gispen was authorised to take the disputed Shareholders' Resolutions on behalf of Rebgun, as representative of Yukos Oil. Subsequently, it should be considered whether Rebgun was authorised to exercise the voting rights on the shares held by Yukos Oil in Yukos Finance on behalf of Yukos Oil.

3.2. The District Court agrees with Rebgun *et al.* that the question who is authorised to represent Yukos Oil in the exercise of its shareholders' rights under Dutch international private law should first of all be answered under Russian law. In regard to this, it should be assumed that under Russian bankruptcy law only Rebgun, as receiver in the bankruptcy of Rebgun, has authority in this respect, as this has been challenged in an insufficiently substantiated manner.

3.3. Subsequently, the District Court is faced with the question whether Rebgun can exercise the representative authority that he is entitled to under Russian bankruptcy law also in the Netherlands, in regard to the voting rights that Yukos Oil is entitled to in respect to the shares it holds in Yukos Finance. Here is should be noted that, as Rebgun's representative authority is based on the judgment whereby Yukos Oil was declared bankrupt in the Russian Federation, Rebgun can only exercise that authority in the Netherlands if and to the extent that the Russian bankruptcy order can be recognised in the Netherlands. There is no treaty between the Russian Federation and the Netherlands for the recognition of bankruptcy proceedings, so that the District Court will have to judge independently whether

and to what extent the Russian bankruptcy order and Rebgun's authority to represent Yukos Oil on the basis of that order are eligible for recognition in the Netherlands.

3.4. Where a relevant treaty is lacking, foreign court decisions are eligible for recognition in the Netherlands only if:
(i) the jurisdiction of the foreign court has a basis that is acceptable under international standards;
(ii) the foreign proceedings were conducted with due observance of the principles of due process of law;
(iii) the foreign judgment is not in violation of Dutch public order.
Godfrey *et al.*'s assertions purport to argue, among other things, that the conditions for recognition of the bankruptcy order mentioned under (ii) and (iii) have not been met.

3.5. The District Court finds that it follows from the established facts presented under 1. above and the insomuch unrefuted assertions of Godfrey *et al.* that the Russian Tax Authorities, following an audit performed by it, imposed an additional tax assessment for the years 2000 and 2001 on Yukos Oil in April 2003, which was subsequently also paid by Yukos Oil. In the autumn of 2003 the Russian Tax Authorities confirmed in three certificates that no more tax was owed. However, subsequently on 8 December 2003 a re-audit was nevertheless announced, which on 29 December 2003 resulted in the conclusion that Yukos Oil owed EUR 2.27 billion in tax for the year 2000. This resulted in additional tax assessments imposed on Yukos Oil on 14 April 2004, to be paid within two days and amounting to EUR 2.29 billion inclusive of interest and fines.

3.6. The next day, 15 April 2004, at the request of the Russian Tax Authorities, freezing orders were imposed on Yukos Oil by the tax court in Moscow in the course of *ex parte* proceedings, as a result of which Yukos Oil, as has been asserted unrefuted by Godfrey et *al.*, was rendered unable to free up financial means to pay the additional tax assessments. On that same day the application of the Russian Tax Authorities to obtain a conviction ordering Yukos Oil to pay the additional tax assessments was taken up by the tax court. On 14 May 2004 Yukos Oil asked the tax court for a postponement of the hearing, but this was refused. On 17 and 18 May 2004 the Russian Tax Authorities sent Yukos Oil a total of 71,000 unordered and unnumbered pages for the benefit of the hearing. On 19 May 2004 Yukos Oil submitted a second request for postponement. This request was also refused by the tax court.

The hearing before the tax court took place from 21 to 26 May 2004 inclusive.
During the hearing, unlike Yukos Oil, the tax court and the Russian Tax Authorities had at their disposal an ordered and numbered file composed by the Russian Tax Authorities. The hearing was conducted based on that file, without a copy of the file being made available to Yukos Oil, whereas it was only allowed to inspect the ordered and numbered file during the lunch breaks.

3.7. The tax court granted the claim of the Russian Tax Authorities for the larger part, on 1 June 2004. The appeal that was lodged against that judgment was subsequently, after a postponement request of Yukos Oil had been refused, heard on 18 June 2004. The Russian Tax Authorities' claim was granted almost in its entirety on 29 June 2004. The appeal in cassation that was instituted against this was dismissed on 10 September 2004.

3.8. The District Court is of the opinion that the course of affairs as represented hereinbefore can only lead to the conclusion that the way in which the additional tax assessment owed by Yukos Oil, and the size thereof, was assessed first by the Russian Tax Authorities and subsequently by the tax court cannot stand the test of criticism. It has to be concluded that the Russian Tax Authorities, despite their earlier announcements that Yukos Oil owed no further tax for 2000 and 2001, on the basis of a re-audit concluded within three weeks that Yukos Oil still owed EUR 2.29 billion in tax for 2000.
The subsequent hearing before the tax court and the appeal are a violation of the fundamental principles of due process of law as generally accepted in the Netherlands and laid down in article 6 ECHR, but which also apply outside the scope of applicability of that article of the convention. In particular, Yukos Oil was unable to avail itself of the time and facilities that, also in view of the amount of the additional tax assessments that were imposed and the nature and volume of the documents that were submitted to it, would reasonably have been necessary for the preparation of its defence, whereas, unlike the tax court and the Russian Tax Authorities, it did not get at its disposal the documents on the basis of which the claim instigated against it was being heard. The conclusion must therefore be that in the course of the determination of the tax it owed to the Russian State and the extent thereof, Yukos Oil was deprived of a fair trial.

3.9. In the view of the District Court, and unlike Rebgun *et al.* have argued, this fundamental legal defect has immediate consequences for an answer to the question whether

the bankruptcy order is eligible for recognition in the Netherlands, since the tax claims and the size thereof that were determined in this manner were the primary cause of Yukos Oil's eventual bankruptcy.

3.10. After all, it follows from the established facts represented under 1. above and the insofar unrefuted assertions of Godfrey *et al.* that the Russian Tax Authorities, for recourse of their claim as established by the tax court, attached the shares held by Yukos Oil in Yuganskneftegaz on 14 July 2004. As was considered hereinto before it should be deemed an established fact that Yukos Oil, as a result of the freezing orders requested by the Russian Tax Authorities, was unable to free up financial means to pay the additional tax assessments imposed. Subsequently, the Yuganskneftegaz shares were sold by the tax bailiff in a public auction on 19 December 2004 and passed on to Rosneft shortly afterwards. Part of the total amount in additional tax assessments of EUR 20.1 billion imposed on Yukos Oil by the Russian Tax Authorities was paid out of the purchase sum.

3.11. In addition, because of the non-payment by Yukos Oil as a consequence of the freezing orders, Yukos Oil's debt to the consortium of approximately USD 480 million became due and payable in its entirety. On 13 December 2005 Rosneft purchased this claim from the consortium, stipulating that the consortium apply for the bankruptcy of Yukos Oil. On 6 March 2006 the consortium filed for Yukos Oil's bankruptcy at the arbitrazh court. As is shown by its judgment dated 28 March 2006, the arbitrazh court substituted Rosneft for the consortium in those proceedings and subsequently – while concluding that Yukos Oil was indebted to Rosneft for USD 472 million, whereas no payment by Yukos Oil had been shown – declared supervision proceedings applicable to Yukos Oil and appointed Rebgun as administrator.

3.12. In the insolvency proceedings that were thus initiated in fact on the initiative of Rosneft, the first meeting of creditors took place on 20 and 25 July 2006. Over half of the debts of Yukos Oil represented there consisted of the additional tax assessments imposed by the Russian Tax Authorities, which Rebgun *et al.* have not refuted with sufficient substantiation. Together with Yuganskneftegaz – whose shares held by Yukos Oil had been auctioned off to provide recourse for the additional tax assessments – and Rosneft – the ultimate acquirer of those shares – the Russian Federal Tax Authorities even represented over 93% of the votes to be cast. At the meeting in question the Russian Federal Tax

Authorities, Yuganskneftegaz and Rosneft voted against accepting the proposed rehabilitation plan and in favour of filing for Yukos Oil's bankruptcy.

3.13. The course of affairs outlined hereinbefore shows that the claims of the Russian Federal Tax Authorities, Yuganskneftegaz and Rosneft all originated, either directly or indirectly, from the additional tax assessments imposed on Yukos Oil by the Russian Tax Authorities. Together these claims amount to over 93% of the total claims admitted in the bankruptcy of Yukos Oil. Moreover, the insolvency proceedings were opened on the initiative of Rosneft while the Russian Federal Tax Authorities, Yuganskneftegaz and Rosneft had the decisive vote in the application for the definitive bankruptcy of Yukos Oil.

3.14. It should thus be concluded, with Godfrey *et al.*, that the bankruptcy of Yukos Oil was caused by the additional tax assessments imposed by the Russian Tax Authorities and that the bankruptcy order would not have been pronounced without those additional tax assessments. This means that the legal defect attached to the way in which the additional tax assessments owed by Yukos Oil, and the volume thereof, were determined impedes recognition in the Netherlands of the bankruptcy order based thereupon.

3.15. This defect, unlike Rebgun *et al.* have argued, is not repaired by the later (substantive) hearing of the bankruptcy application by first the arbitrazh court and later the arbitrazh appeals court.
In its judgment of 4 August 2006 the arbitrazh court stated nothing whatsoever about the nature of the claims on Yukos Oil on which the bankruptcy application is based and the way in which these claims were effected.
Also in the appeal, the appeals court failed to give a substantive assessment of the way in which the tax assessments on which the bankruptcy application was based were determined.
In the appeal, the appeals court considered that:

The plaintiff indicated that the appealed judicial act incurs dismissal of the debtor's management and compulsory alienation of its property, which contradicts national legislation of Russia and does not comply with the requirement of the quality of Law established by the Convention on the Protection of Human Rights and Fundamental Freedoms, and represents interference into the rights to respect private property.
In the debtor's opinion, there were no grounds to make a conclusion about the negative balance between its liabilities and the cost of assets and, as a consequence, the debtor's inability to satisfy

creditors' claims. Additional tax liability asserted in accordance with the results of tax audits for 2000-2003 was based on an unpredictable new interpretation of tax legislation which, in the sense of the Convention, does not comply with the requirement of the legality.
In addition, the Plaintiff specifies that the court of the first (trial) instance, by its ruling of August 4, 2006, illegally rejected the motion on the suspension of the proceedings in the case until the debtor's complaint is considered by the European Court. This circumstance, in the opinion of the plaintiff, caused, by virtue of Paragraph 1, Article 52 and Paragraph 2, Article 58 of the Federal Law "On Insolvency (Bankruptcy)" the issuance of the incorrect indecision, since the establishment of the signs of bankruptcy depends on the legality and reasonability of creditors' claims.

3.16. Subsequently, the appeals court considers that the circumstance that it had not been proven that the complaint of Yukos Oil was actually being examined by the European Court:
made, in fact, impossible to consider the debtor's argument of the necessity to suspend proceedings in the case prior to the adoption of a decision by the European Court.

3.17. As regards the illegal determination of its debts to the Russian Federation as asserted by Yukos Oil, the appeals court considers that:
in the opinion of the court of the appellate instance, as regards the adoption of the disputed decision there are no legal grounds to consider that the Russian Federation and the Arbitrazh Court of the City of Moscow violated the norms of either national or international law.
(...)
As follows from the materials of this case, judicial acts confirmed prolonged violation by the debtor of tax legislation, in connection with which he was held liable for deferred payments several times. This fact was established, including by the ruling adopted by the court of the first instance, and by the resolution of the appellate instance in the course of the consideration of the request of the RF Federal Tax Service to include it in the register of claims of Yukos' creditors.

3.18. In this way, the appeals court also failed to make a substantive determination about the way the claims on which the bankruptcy application was based were effected, and merely pointed out that the existence of these claims had already been ascertained by a different court in different proceedings.

3.19. The latter is also in accordance with the content of an affidavit brought into the proceedings by Rebgun *et al.* and left undisputed in this respect, concerning the applicable Russian law, of the Russian lawyer M.A. Rozenberg, dated 1 November 2006. After all,

Rozenberg writes:

the major part of the Russian Tax Claims was based on the respective Russian court judicial acts which are currently effective and in legal force in the Russian Federation. Therefore, Russian Tax Claims can not be re-considered by the Bankruptcy Court while such judicial acts are in existence. (...) By virtue of Section 1 of Article 16 of the RF APC (Russian Federation Arbitrazh Procedure code, rb), the judicial acts which came into legal force are mandatory for all persons and state bodies (including other courts) on the territory of the Russian federation.

3.20. It follows from the above that also in the bankruptcy proceedings, no substantive, sufficiently safeguarded, judicial review took place or could have taken place of the manner in which the additional tax assessments, as imposed by the Russian Tax Authorities and determined by the tax court, were determined. After all, based on the content of Rozenberg's affidavit insofar as left undisputed it should be deemed an established fact that under Russian law court decisions have legal force, so that they are binding to all government institutions, including other courts, as a result of which the bankruptcy court was unable to review the additional tax assessments and therefore could not test in a substantive manner the determination of the additional tax assessments and the way in which the tax court determined these assessments. This further means that the circumstance that Yukos Oil did not lodge an appeal in cassation against the decision of the appeals court also need not prevent Godfrey *et al.* from resisting recognition in the Netherlands of the bankruptcy order with an invocation of violation of the public order. After all, one has to assume that also in cassation, no substantive test of the claims of the Federal Russian Tax Authorities could have taken place, so that this could not have repaired the fundamental legal defect attached to the bankruptcy order either.

3.21. The above leads to the conclusion that the Russian bankruptcy order in which Rebgun was appointed receiver in the bankruptcy of Yukos Oil was effected in a manner not in accordance with the Dutch principles of due order of process and is thus in violation of the Dutch public order. For that reason, the bankruptcy order cannot be recognised and the receiver's powers that ensue from it under Russian law cannot be exercised by Rebgun in the Netherlands. This entails that Rebgun was not authorised to represent Yukos Oil in the Netherlands in regard to the exercise of the voting right on the shares held by it in Yukos Finance. The shareholders' resolutions taken by Rebgun on behalf of Yukos Oil, including the resolution to dismiss Godfrey and Misamore of 11 August 2006 and the resolutions to

appoint Shmelkov and Hogerbrugge as directors of Yukos Finance, were not taken by the corporate body designated by law to take them, and are therefore null and void.
This also means that Shmelkov and Hogerbrugge were never appointed directors of Yukos Finance, so that all decisions taken by them in that capacity are also null and void.

3.22. From what has been considered hereinbefore, it follows that the declaratory judgments claimed principally under 1 and 2 can be allowed. The orders and injunctions requested under 3 to 6 inclusive can, as otherwise unrefuted, also be allowed on condition that the District Court, in accordance with Rebgun *et al.*'s request in that regard, will moderate and make subject to a maximum the penalties claimed, in the manner mentioned herein below. Parties' other assertions and defences can remain undiscussed. This also applies to Rebgun *et al.*'s invocation of a conflict of interest that was first put forward during pleadings (and therefore too late).

3.23. As the party against whom judgment has been given Rebgun *et al.* will be ordered to pay the costs of the proceedings.

The decision

The District Court:

- passes a declaratory judgment that all Shareholders' Resolutions in regard to Yukos Finance, in so far as taken by Rebgun in his capacity of receiver of Yukos Oil, including but not limited to the decision to dismiss Godfrey and Misamore as directors of Yukos Finance B.V. dated 11 August 2006 and the alleged decisions to appoint Shmelkov and Hogerbrugge as directors of Yukos Finance, are null and void;

- passes a declaratory judgment that all decisions taken by Shmelkov and/or Hogerbrugge in their supposed capacity of directors of Yukos Finance B.V. are null and void;

- orders Rebgun to lend his immediate and unconditional cooperation to the reversal of the Shareholders' Resolutions he made in Yukos Finance and of the consequences thereof, subject to a penalty of EUR 10,000 for each individual violation and of EUR 1,000 for each day that such violation continues, to a maximum of EUR 500,000;

- forbids Rebgun to exercise any rights with respect to the shares of Yukos Finance or to have these rights exercised, subject to a penalty of EUR 10,000 for each individual violation and of EUR 1,000 for each day that such violation continues, to a maximum of EUR 500,000;

- orders Shmelkov and Hogerbrugge, both jointly and severally, to lend their immediate and unconditional cooperation to the reversal of the managerial decisions taken in Yukos Finance and of the consequences thereof, whether individually or jointly, subject to a penalty of EUR 10,000 for each individual violation and of EUR 1,000 for each day that such violation continues, to a maximum of EUR 500,000;

- forbids Shmelkov and Hogerbrugge to exercise any rights with respect to their alleged representative authority in Yukos Finance or to have these rights exercised, subject to a penalty of EUR 10,000 for each individual violation and of EUR 1,000 for each day that such violation continues, to a maximum of EUR 500,000;

- orders Rebgun, Shmelkov and Hogerbrugge jointly and severally to pay the procedural costs on the side of Godfrey *et al.*, estimated up to this judgment at EUR 332.87 in disbursements and EUR 1,808 in local counsel's salary;

- orders Shmelkov to pay the costs incurred in connection with the Russian translation of the writ of summons, being EUR 10,882.06;

- declares the aforementioned orders and injunctions as well as the orders to pay the procedural costs immediately enforceable;

- dismisses all other applications.

This judgment was passed by *mr.* W. Tonkens-Gerkema, *mr.* C.S. Naarden and *mr.* A.W.H. Vink and delivered in open court on 31 October 2007.