Iranian state entity fails in Dutch appeal over gas award

Susannah Moody

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The Dutch Supreme Court (Credit: Shutterstock/DCStockPhotography)

The Dutch Supreme Court has refused to revisit the enforcement of an award ordering the National Iranian Oil Company to pay US$2.75 billion to the UAE's Crescent Petroleum – months after its enforcement was also upheld in Greece.

On 23 January, the Dutch Supreme Court **dismissed** NIOC's appeal in cassation. It said it saw no reason to depart from the rule established in its own case law restricting the possibility of appeal from orders granting enforcement of foreign arbitral awards.

Crescent won a pair of awards in a London-seated arbitration against NIOC over a failed deal for the supply of gas from the Persian Gulf to the Emirati port of Sharjah for a 25-year-old period.

In a partial award in 2014, a tribunal majority made up of Australian chair **Gavan Griffith KC** and Bangladesh's **Kamal Hossain** **upheld** jurisdiction and found NIOC liable under the supply agreement. NIOC's appointee **Assadoolah Noori** dissented.

Seven years later, an entirely reconstituted tribunal – formed of Australian chair **Murray Gleeson AC** and co-arbitrators **Sir Jeremy Cooke** and **Lord Phillips** ordered NIOC to pay more than US$1.33 billion for Crescent's loss of profits and US$1.1 billion relating to a joint venture with the UAE's Dana Gas, for onward sales.

In 2022, the District Court of Rotterdam **recognised** and enforced the two awards in spite of NIOC's contention that Crescent had procured the contract through corruption. The court said the corruption allegations had been considered and rejected by the tribunal and the UK courts at the seat, while NIOC had not presented any new evidence in the Dutch enforcement proceedings.

Under Dutch civil procedure, an "asymmetric prohibition of legal remedies" applies to enforcement of Dutch arbitral awards – meaning that parties can appeal court orders denying enforcement of an award but not orders granting enforcement.

The Dutch Supreme Court established in 2010 in the ***Rosneft v Yukos Capital*** case that the same rule applies in respect of foreign awards, in light of a requirement in article 3 of the New York Convention that signatory states should not impose "substantially more onerous conditions or higher fees or charges" for recognition of foreign awards than for domestic ones.

NIOC appealed to the Hague Court of Appeal on the grounds that the asymmetric appeal prohibition should not apply to foreign arbitral awards, saying it would have the effect of limiting the sovereignty of the country of execution.

The Court of Appeal **found** in 2024 that allowing appeals against enforcement orders would make it more onerous to enforce foreign awards than domestic awards. It also rejected NIOC's arguments that the prohibition should not apply where the applicable agreement had allegedly been procured through corruption. It said the treaties cited by the Iranian company – which included the UN Convention against Corruption – were aimed at states, and did not apply to international arbitration law.

In the latest judgment, the Dutch Supreme Court said it saw no reason to disapply the asymmetric prohibition and that the grounds for refusing enforcement invoked by NIOC were irrelevant. This was because permitting an appeal would make enforcement of foreign awards considerably more onerous than the procedure for domestic awards, in violation of the prohibition on discrimination in article 3.

Crescent was represented in the Dutch courts by Legaltree, with support in the Supreme Court from Wijn & Stael in Utrecht. NIOC turned to Salomons Beelaerts and **Marcus Wagemakers** in the Supreme Court, having used M Taheri in Rotterdam in the lower courts.

Arjan van den Steenhoven of Salomons Beelaerts and Wagemakers tell GAR that as far as they are aware, the Netherlands is the only jurisdiction in which the New York Convention's prohibition on "substantially more onerous conditions or higher fees or charges" is interpreted "this widely".

They say they referred to case law from Portugal, India, Egypt, Hong Kong and England and Wales, in which courts dealt with "obstacles" prior to enforcement of

foreign awards. They argued that the possibility of appeal after an enforcement order was irrelevant to article 3.

However, the lawyers say that the decision "shows that the Netherlands is still an arbitration-friendly jurisdiction".

Crescent has also secured enforcement of the awards in England, the UAE, the US and Greece.

Greek appeal court upholds enforcement

In October, Crescent also obtained a ruling from the Athens Court of Appeal upholding enforcement of the same awards.

It upheld a ruling by the Athens Single-Member Court of First Instance that rejected various defences brought by NIOC, including that the award undermined sanctions against Iran.

The Court of Appeal said NIOC had not shown how the award undermined sanctions law.

It also rejected NIOC's arguments that the contract had lacked the constitutionally required approval of the Iranian government; and that the tribunal exceeded its jurisdiction by compensating Crescent for claims of an affiliate that was not party to the arbitration agreement.

The Court of Appeal also dismissed NIOC's contention that the tribunal had violated its right to a hearing in rejecting material allegations.

NIOC also failed in arguments that that the award violated Greek public policy because the compensation awarded was not proportionate and the award had violated sanctions on Iran.

Crescent used a team from Moussas & Partners, led by **Nicholas Moussas.** In a press release **issued** in autumn, Moussas & Partners says the ruling is "particularly significant for its comprehensive analysis of the New York Convention's requirements for recognising and enforcing international awards".

The firm adds: "It exemplifies Greece's strong commitment to the correct application of the Convention and the robust enforcement of arbitral awards."

NIOC turned to **Panagiotis Torvas, Jason Kampanelis** and **Panagiotis Giannopoulos**, having used Lambadarios Law Firm in the lower court.

Crescent's enforcement efforts have also led to the **sale of NIOC property** in Rotterdam and the targeting of the Iranian entity's **former headquarters in London**.

The UAE company has been pursuing a second arbitration against NIOC in which it is seeking US$32 billion, covering a different period under the same gas supply agreement. That case, seated in Geneva, has been dogged by multiple arbitrator challenges and resignations.

The tribunal was originally composed of **Laurent Aynès, Klaus Sachs** and **Charles Poncet**. However, Aynès and Poncet were disqualified in 2023 while Sachs resigned.

A replacement panel was formed consisting of Colombian arbitrator **Eduardo Zuleta** as chair, **Wayne Martin KC**, former chief justice of Western Australia, appointed by Crescent, and Iranian **Mir-Hossein Abedian Kalkhoran,** appointed by NIOC. However, GAR understands that Zuleta has since resigned from the tribunal for health reasons. His successor is yet to be made public.

In the Dutch Supreme Court

Bench

- **G de Groot** (president)
- **C du Perron**
- **H Wattendorff**
- **S Schaafsma**
- **K Teuben**
- **A ter Heide**

Counsel to Crescent

- Legaltree

Niek Peters

- Wijn & Stael

Thijs van Zanten

Counsel to NIOC

- Salomons Beelaerts

Arjan van den Steenhoven

- **Marcus Wagemakers**

In the Athens Court of Appeal

Bench

- **Paraskevi Karkatzouni**

Counsel to Crescent

- Moussas & Partners

Nicholas Moussas, Vassilios Moussas, Maria Malikouti and **Christina Petra Grigoriadou** in Athens

Counsel to NIOC

- **Panagiotis Torvas**
- **Jason Kampanelis**
- **Panagiotis Giannopoulos**

Susannah Moody

Senior Reporter

GAR

susannah.moody@globalarbitrationreview.com