

Russian Constitutional Court rules on provisional application of international treaties

by *Practical Law Arbitration*, with *KK&P*

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In a Russian Constitutional Court Ruling of 24 December 2020 "*On the clarification of the Resolution of the Constitutional Court of the Russian Federation of March 27, 2012 No. 8-P regarding the review of the constitutionality of paragraph 1 of Article 23 of the Federal Law On International Treaties of the Russian Federation*", the court clarified its previous position regarding provisional application of dispute resolution provisions in international treaties.

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On 24 December 2020, the Russian Constitutional Court issued a ruling clarifying its previous position regarding provisional application of dispute resolution provisions in international treaties.

The Constitutional Court's previous position is set out in *Resolution No. 8-P*, dated 27 March 2012, in which the court ruled in favour of the provisional application of international treaties that have been officially published and affect human rights even if they contradict Russian law.

The current ruling clarifies that investor-state dispute resolution provisions in international treaties providing for international arbitration cannot be applied provisionally, even where the treaty has been officially published, but not ratified by the Parliament. The court distinguished between commercial arbitration and investment arbitration, the latter of which considers a state's sovereign activity, which is subject to the state courts' jurisdiction, in the absence of a specific international treaty providing otherwise.

The Constitutional Court also highlighted that even though the Russian government consented to provisional application of international treaties, such consent does not cover the dispute resolution provisions.

Among other things, the Constitutional Court supported its approach by citing its analysis of the applicability of the Energy Charter Treaty (ECT), which was signed by the Russian Government in 1994, but never ratified by the Parliament. Notably, the UNCITRAL tribunal in the *Yukos* case held it had jurisdiction under the ECT to hear claims against Russia. The provisional application of the dispute resolution provision in the ECT is the cornerstone issue in dispute between Russia and the former *Yukos* shareholders before the Dutch Supreme Court hearing Russia's challenge of the USD57 billion award (see [Toolkit, Practical Law Arbitration resources on developments arising out of Yukos awards](#)).

It seems likely that the key reason this ruling was adopted is to make an additional impact on the Dutch Supreme Court proceedings, in which Russia's appeal is scheduled for February 2021. Counsel for Russia has already submitted an English translation of the Constitutional Court ruling to the Dutch Supreme Court.

Case: *Ruling of the Constitutional Court of the Russian Federation "On the clarification of the Resolution of the Constitutional Court of the Russian Federation of March 27, 2012 No. 8-P regarding the review of the*

constitutionality of paragraph 1 of Article 23 of the Federal Law On International Treaties of the Russian Federation" (24 December 2020).

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