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This text is an unofficial translation of the Dutch original. In case of any discrepancies, the Dutch original shall prevail.

Supreme Court of the Netherlands

Hearing date: 5 February 2021

Case number: 20/01595

WRITTEN EXPLANATION

by R.S. Meijer, R.R. Verkerk and A.E.H. van der Voort Maarschalk¹

in the case of

The Russian Federation, claimant in the principal appeal, respondent in the cross-appeal,

v

Veteran Petroleum Limited, Yukos Universal Limited and Hulley Enterprises Limited, respondents in the principal appeal, claimants in the cross-appeal, to be referred to as "**HVY**"
counsel: T. Cohen Jehoram, J. de Bie Leuveling Tjeenk and B.M.H. Fleuren

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¹ With the cooperation of, *i.a.* I.P.M. van den Nieuwendijk, R.A González Nicolás, A. Jianpinitnan and D.M. Agranovich.

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38. The phrase "*have priority over Russian laws*" is found in a paragraph of Resolution 8-P describing the party position and policy of the executive power. However, in its Resolution 8-P, the Constitutional Court explicitly declared that policy to be unconstitutional. The CoA thus designates a party's position that was explicitly rejected by the Constitutional Court as a "*clear*" and "*unmistakable*" ruling by the Constitutional Court itself. Numerous unanimous legal sources are set aside here on the basis of a single sentence in a decision on a completely different subject. Even that one sentence – from which far-reaching conclusions were derived – was not seriously studied by the CoA, because it incorrectly attributed that sentence to the Constitutional Court itself. This ruling is not only incorrect⁶⁸ but it is also not sufficiently substantiated given the underlying source material.

The Constitutional Court and the broader implications of this case

39. The Russian Federation would like to emphasise the seriousness and consequences of the CoA's judgment. Numerous articles and blogs have already been published about this case. Many specialists in international law closely monitor this case. This case has implications for other arbitration proceedings based on the same treaty and presumably also for possible future proceedings based on other treaties. The mistakes made by the CoA will take on a life of their own. The Russian Ministry of Justice was therefore forced to submit questions to the Constitutional Court.⁶⁹ Those questions concern the interpretation of its previous case law, in particular Resolution 8-P.
40. The Constitutional Court rendered a decision on 24 December 2020. This decision was – not surprisingly – entirely in line with the sources briefly mentioned above (§ 34 above). The Constitutional Court referred to its previous decisions. It held that the provisional application of treaty provisions that contemplate resolution of disputes with foreign investors by means of arbitration is not allowed under the Constitution. Resolution 8-P does not suggest otherwise. The Constitutional Court's decision is based on the principle of separation of powers: the Russian Government cannot, by signing an international treaty, remove any disputes from the general jurisdiction of state courts. Russian Parliament should consent thereto, by adopting a federal law ratifying such an international treaty. It can be deduced from this decision, as well as from all

⁶⁸ As is evident from the District Court's Judgment, §§ 5.74 *et seq.*

⁶⁹ It is clear from the decision that the questions were submitted on behalf of the government. The Ministry of Justice took the lead on this.