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ARBITRAZH COURT OF THE CITY OF MOSCOW

17 Bolshaya Tuskaya St., Moscow 115191 <http://www.msk.arbitr.ru>

Order

for interim measures Case

No. A40-92702/25-56-674

April 29, 2025

г. Moscow

Judge Kartavaya O.N.

Having considered the application of the General Prosecutor's Office of the Russian Federation for interim measures in the case of

applicant: the Office of the Prosecutor General of the Russian Federation represented by the Deputy Prosecutor General of the Russian Federation in defense of the interests of the Russian Federation

Interested parties: 1. Wintershall Dea GmbH

2. Law Firm Aurelius Cotta

3. Charles Poncet

Hamid Gharavi (Hamid Gharavi,

5. Olfunke Adekoya (Nigeria)

Third parties:

1. Ministry of Energy of the Russian Federation (TIN: 7705847529, OGRN: 1087746777205) 7, Kitaygorodsky pr-d, Moscow, 109012

PJSC Gazprom

3. Permanent Court of Arbitration, PC A- Permanent Court of Arbitration

The Palace of Peace Carnegieplein 2, 2517 KJ, The Hague, Netherlands,
Karnegieplein 2, 2517 KJ, The Hague, The Netherlands

Prohibition to continue or maintain arbitration proceedings in international commercial arbitration

SETTING:

The General Prosecutor's Office of the Russian Federation, acting in the interests of the Russian Federation, has applied to the court to ban Wintershall ("Wintershall Dea GmbH", Germany, registration number: [REDACTED])

[REDACTED]), the law firm Aurelius Cotta (Aurelius Cotta, Germany, registration number: [REDACTED]), the arbitrators Charles Poncet, born [REDACTED] (Charles Poncet), Hamid Gharavi, born [REDACTED] (Hamid Gharavi) and Olufunke Adekoya, born 07.03.1952 (Olfunke Adekoya) to continue and maintain the proceedings of Wintershall (Wintershall Dea GmbH, Germany, registration number: [REDACTED]) against the Russian Federation under the Energy Charter Treaty (Lisbon, 1994). on all issues related to the issuance of Decrees of the President of the Russian Federation dated 19.12.2023 № 965 "On Special Economic Measures in the Fuel and Energy Sphere in Connection with Unfriendly Actions of Certain Foreign States and International Organizations" and dated 19.12.2023 966 № "On Additional Special Economic Measures in the Fuel and Energy Sphere in connection with unfriendly actions of certain foreign States and international organizations", including in Case No. 2024-42 before the Permanent Court of Arbitration (The Hague, Netherlands).

By the court's ruling dated 23.04.2025 the application was admitted to proceedings, the Ministry of Energy of the Russian Federation, PJSC Gazprom, the Permanent Court of Arbitration ("PCA") were involved in the case as third parties not asserting independent claims regarding the subject of the dispute .

The court received an application from the Prosecutor General's Office of the Russian Federation for interim measures. The application is justified by the fact that the international proceedings opened by Wintershall against the Russian Federation are administered by the Permanent Court of Arbitration (The Hague), which is located in the territory of the Kingdom of the Netherlands, which is hostile to Russia. At present, the arbitrators are Charles Poncet (Switzerland), Hamid Gharavi (France) and Olufunke Adekoya (UK). These arbitrators, when appointed, concealed circumstances that might raise reasonable doubts as to their impartiality or independence. At the same time, the international legal procedure to compulsorily disqualify the appointed arbitrators cannot be applied because the Secretary General of the administering authority, Marcin Piotr Cepelak, who is exercising it, is involved in the process of aggression against Russia and cannot perform his functions impartially.

In view of the provisions of Articles 90, 91 of the APC RF, in the applicant's opinion, with reference to the fact that the unimpeded international proceedings of Wintershall v. Russian Federation may cause significant economic damage to the State, it is necessary to impose on the interested parties in the case the obligation to suspend all procedures in the framework of the said arbitration proceedings until a decision is made on the application of the General Prosecutor's Office of the Russian Federation for an injunction to continue and maintain international commercial arbitration proceedings.

Having considered the petition of General Prosecutor's Office of the Russian Federation for interim measures and the submitted documents, the arbitration court concludes that there are grounds and possibilities for its satisfaction due to the following.

By virtue of part 1 of article 90 of the APC RF, the arbitration court at the request of a person participating in the case, and in cases stipulated by this Code, and another person may take urgent temporary measures aimed at securing the claim or property interests of the applicant (interim measures), including in the case of postponement of court proceedings in order to settle the dispute.

Interim measures are allowed at any stage of the arbitration process if failure to take these measures may make it difficult or impossible to execute a judicial act, including if the execution of the judicial act is expected outside the Russian Federation, as well as in order to prevent significant damage to the applicant (part 2 of Article 90 of the APC RF).

Difficult nature of execution of a judicial act or impossibility of its execution may be related to actions taken by interested persons in the case.

By virtue of the provisions of Chapter 8 of the APC RF, interim measures must correspond to the claimed requirements, i.e. be directly related to the subject matter of the dispute, proportionate to the claimed requirements, necessary and sufficient to ensure the execution of a judicial act or prevent damage.

Pursuant to Article 91 of the APC RF, the arbitration court may take other interim measures not named in this article.

When considering an application for interim measures, the court shall determine whether there are grounds for taking interim measures, determine whether the particular measure requested by the applicant is related to the subject matter of the claimed claim, is proportionate to it and how it will ensure the actual realization of the purpose of taking interim measures.

In assessing the applicant's arguments, the courts should bear in mind, in particular:

-reasonableness and validity of the applicant's request for interim measures;

-The relationship of the requested interim measure to the subject matter of the claimed claim;

-probability of significant damage to the applicant in case of non-acceptance of interim measures

-ensuring a balance between the interests of the parties;

-prevention of violation of public interests, interests of third parties when taking interim measures.

The court shall take interim measures for both property and non-property claims, including the imposition of an obligation to perform certain actions or to refrain from performing them. An application for an interim measure may be granted only if the requested measure is related to the subject matter of the claimed claim (paragraphs 6 and 17 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 15 of 01.06.2023 "On Some Issues of Adoption by Courts of Measures to Secure a Claim, Interim Measures and Preliminary Defense Measures").

In order to prevent significant damage to the applicant, interim measures may be aimed at preserving the existing state of relations ("status quo") between the parties (paragraph 14 of the Ruling of the Plenum of the Supreme Court of the Russian Federation of 01.06.2023 № 15 "On some issues of taking courts measures to secure a claim, interim measures and measures of preliminary defense").

In support of the claims for interim measures, the prosecutor pointed out that under the auspices of the biased PCA Wintershall had succeeded in forming a biased panel of arbitrators that included Charles Poncelet (Switzerland), Hamid Gharavi (France) and Olufunke Adekoya (United Kingdom). Each of them is a resident of unfriendly states, has close ties with them, has been under the influence of their political elites for a long time and is susceptible to anti-Russian propaganda.

However, contrary to the Guidelines on Conflicts of Interest in International Arbitration (issued by the International Bar Association on 25.05.2024), as well as the UNCITRAL Arbitration Rules (approved by the UN General Assembly on December 15, 1976), the said arbitrators failed to fulfill the duty to inform the parties to the dispute of the circumstances that raise justifiable doubts as to their impartiality or independence.

In the light of the circumstances, the prosecutor pointed out that the arbitrators formed, contrary to the generally recognized principles of international law, could not independently and impartially administer justice in the Wintershall dispute with the Russian Federation.

By virtue of the express provision of article 9 of the UNCITRAL Arbitration Rules, the prospective arbitrator shall communicate to those who contact him or her in connection with his or her possible appointment any

circumstances likely to give rise to justifiable doubts as to his impartiality or independence. The arbitrator, when appointed or elected, shall disclose such circumstances to the parties unless they have already been previously notified by him of such circumstances.

Under article 10, paragraph 1, of the UNCITRAL Arbitration Rules, any arbitrator may be challenged if there are circumstances giving rise to justifiable doubts as to his or her impartiality or independence.

Along with the mentioned norms of law, the court analyzed the Guidelines on Conflicts of Interest in International Arbitration (issued by the International Bar Association, 25.05.2024). As follows from paragraph 1 of the introduction of the said document, the Arbitration Committee of the International Bar Association considered a number of factors in its preparation, including the fundamental importance of the independence and impartiality of arbitrators. The resulting Guidelines seek to balance the various interests of the parties, their representatives, arbitrators, arbitral institutions, each of which is responsible for the integrity, reputation and efficiency of international arbitration (paragraph 4 of the introduction).

However, paragraph 5 of the introduction establishes that the Guidelines are applicable any international arbitration.

It is clear from the content of the Guidelines that each arbitrator must be impartial and independent of the parties. However, an arbitrator must decline to be appointed or to serve if there is any doubt about his or her ability to act impartially and independently. Doubts are considered reasonable if a reasonable third party would conclude that there is a possibility that the arbitrator may be influenced by factors other than the merits of the case, as presented by the parties, in reaching a decision (part 1, paragraphs , 2 (a, c)).

However, where there are facts or circumstances that may give rise to doubts as to impartiality or independence, the arbitrator should disclose such facts or circumstances to the parties, the arbitral institution or other appointing authority. Any doubts as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favor of disclosure (part 1, paragraph 3 (a, c), of the Guidelines).

The basic approaches to the issue of assessing the independence and impartiality of arbitrators set out in the Guidelines have been adapted and applied in international jurisprudence. At the same time, the Court has taken into account international practice, which shows that facts similar in nature to those referred to by the prosecutor in the present case may indicate a violation of the principle of impartiality and neutrality of the proceedings. For example, the Swiss Federal Court set aside an arbitral award due to comments made by one of the arbitrators regarding Chinese nationals on a social networking site, which created doubts as to his impartiality towards the Chinese party to the proceedings (Decision No. 4A_318/2020 of 22.12.2020).

When considering the case of Ukraine v. Russian Federation, the arbitral tribunal dismissed two arbitrators who participated in the signing of the declaration of the Institute of International Law condemning "Russia's aggression in Ukraine" due to violation of the principles of independence and impartiality (decision of 06.03.2024 in the case PCANº 2019-28).

Moreover, according to the position of the Supreme Court of the Russian Federation, the lack of impartiality and objectivity of arbitrators from unfriendly jurisdictions with the purpose to harm the Russian Federation is presumed (definition of 26.07.2024 in case No. A45-19015/2023).

Thus, the suspicions raised in the prosecutor's statement against the arbitrators are of a principled nature, as they call into question the observance of generally recognized fundamental and basic principles of judicial proceedings.

In particular, as the complainant pointed out, Charles Poncet openly demonstrates prejudice towards people of other cultural and national. For this, in November 2023, he was suspended from the arbitration proceedings between Crescent Petroleum and the oil organization of Iran on the grounds of religious Intolerance towards Muslims (decision of 08.11.2023 in the case of Crescent v. Nioc (II)). However, he concealed this fact and did not reflect it in his declaration on impartiality and independence in the initiated dispute Wintershall v. Russia. At the same time, citizens who profess Islam are an integral part of the multinational people of the Russian Federation, and the religion itself is the second in number of believers in Russia. As such, Ponce is unable to adjudicate the dispute against Russia in an impartial and unbiased manner.

Similarly, according to the applicant, the presiding arbitrator, Olufunke Adekoya, concealed from the representatives of the Russian Federation that she was dependent on the British government services. By virtue of the Foreign Influence Registration Scheme (FIRS) operating in the United Kingdom, she is obliged to inform the authorized government agencies of that country of all contacts with the Russian Federation. Thus, it is unable to ensure the confidentiality, independence and impartiality of proceedings against Russia.

In doing so, the court takes into account the provisions on immunity from prosecution of arbitrators Charles Poncelet (Switzerland), Hamid Gharavi (France) and Olufunke Adekoya (United Kingdom) (paragraph 12 of the Terms of Appointment of Arbitrators dated 17.12.2024). However, the court concludes that the case at hand is not covered by this immunity. There are reasons to assume that during their appointment the said arbitrators concealed significant information, including about the presence of their stable ties with states unfriendly to the Russian Federation. Such behavior contradicts the requirements of article 9 of the UNCITRAL Arbitration Rules and is an abuse of right.

At the same time, the court takes into account that the arbitrators actively implement procedures in the international arbitration proceedings of Wintershall v. Russian Federation. Thus, the arbitrators on 03.01.2025 in case No. 2024-42 adopted a procedural order№ 1, which, among other things, determined the legal seat of arbitration - Dubai International Financial Center ("DIFC").

At the same time United Arab Emirates 21.08.2006 joined and ratified the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958). The Convention provides that the recognition and enforcement of an arbitral award may be refused if the composition of the arbitral body or the arbitral process was not in accordance with the parties' agreement or, in the absence thereof, was not in accordance with the law of the country where the arbitration took place (Article 5, paragraph 1, subparagraph d, paragraph 1).

Thus, it is of fundamental importance for the United Arab Emirates judiciary to respect the fundamental principles of judicial procedure, which include the impartiality, neutrality and independence of arbitrators.

However, Wintershall, the law firm Aurelius Cotta and the PCA ignore these principles despite repeated letters from the Ministry of Energy of the Russian Federation calling for their compliance.

The Court also takes into account the prosecutor's arguments that only by taking measures to temporarily suspend the proceedings initiated by Wintershall against the Russian Federation would it be possible to prevent harm to the public interest and preserve the existing state of relations between the parties.

As the Supreme Court of the Russian Federation has pointed out, an injunction to commit certain acts is preventive in nature and is effective only until the acts are committed. Once they have been committed, the injunction does not provide the applicant with legal protection and loses all meaning (ruling of 09.12.2021 in case No. A60-36897/2020).

In view of the above, the Court concludes that the measures claimed to impose on the parties concerned in the case the obligation to suspend the implementation of all procedures in open international proceedings are directly related to the subject matter of the dispute, are proportionate to it, and are aimed at preserving the "status quo". Failure to take these interim measures may lead to the fact that the Arbitral Tribunal will decide on the merits of the claims filed by Wintershall before the consideration of the present case. This will result in the impossibility of enforcing the judicial act if the prosecutor's claims are satisfied.

These circumstances indicate that there is no guarantee of enforceability of the probable judicial act in favor of the applicant.

As noted above and explained in paragraph 15 of Resolution No. 15, interim measures are an accelerated remedy, therefore, their application does not require the submission of evidence to the extent necessary to substantiate the claims and objections of the party on the merits of the dispute.

The promptness of resolving the issue of interim measures under a low standard of proof of the relevant circumstances does not violate the rights of the defendants, because in addition to the requirement of judicial review of the validity and proportionality of these measures, the legislation establishes other guarantees of observance of its interests.

Thus, in particular, at the request of interested parties, an interim measure may be replaced by another one (Article 95 of the APC RF) or canceled by the same court within a short period of time (Article 97 of the APC RF).

Taking into account the above, as well as taking into account the specific circumstances of the case, the court considers it possible to take the requested interim measures.

Having assessed the stated arguments, the court comes to the conclusion that failure to take interim measures may make it impossible to execute the judicial act, in connection with which the application for interim measures is subject to satisfaction.

Guided by Articles 90, 91, 93, 96, 184-188 of the Arbitration Procedural Code of the Russian Federation, the Moscow City Arbitration Court

Decided:

To satisfy the application of the General Prosecutor's Office of the Russian Federation for interim measures.

To oblige Wintershall ("Wintershall Dea GmbH", Germany, registration no.: HRB 212344, identification no.: DE814756974), the law firm Aurelius Cotta ("Aurelius Cotta", Germany, registration no: PR 3030, identification number: DE361031748), their directors, officers, representatives, successors, ultimate beneficiaries, liquidators and their authorized agents, counterparties;

Referees Charles Poncet, born 31.12.1946 (Charles Poncet), Hamid Gharavi, born 20.02.1971 (Hamid Gharavi) and Olufunke Adekoya, born 07.03.1952 (Olfunke Adekoya);

Permanent Court of Arbitration (PCA),

приостановить реализацию всех процедур, связанных с продолжением или поддержанием арбитражного разбирательства компании Винтерсхалл («Wintershall Dea GmbH», Германия, регистрационный номер: HRB 212344, идентификационный номер: DE814756974) против Российской Федерации на основании Договора к Энергетической хартии (г. Lisbon, 1994) on all issues related to the issuance of Decrees of the President of the Russian Federation dated 19.12.2023 № 965 "On Special Economic Measures in the Fuel and Energy Sphere in Connection with Unfriendly Actions by Certain Foreign States and International Organizations" and dated 19.12.2023 966 №

"On additional special economic measures in the fuel and energy sector in connection with unfriendly actions of some foreign states".

and international organizations", including in case No. 2024-42 at the Permanent Court of Arbitration (The Hague, Netherlands), until the final decision on the application of the Office of the Procurator-General of the Russian Federation in case No. A40-92702/2025.

If the arbitral tribunal makes a ruling to secure a claim, a person participating in case shall have the right to file a motion to cancel the security for the claim, which shall be considered in accordance with the procedure provided for by Article 97 of the APC RF.

The filing of a motion to cancel the security for a claim does not suspend the enforcement of the ruling on the security for a claim.

The ruling may be appealed in the manner and within the time limits provided for by the Arbitration Procedural Code of the Russian Federation.

JUDGE

O.N. Kartavaya