IN THE NAME OF THE RUSSIAN FEDERATION

The Constitutional Court of the Russian Federation

Judgment

of 19 January 2017 No. 1-П/2017

in the case concerning the resolution of the question of the possibility to execute in accordance with the Constitution of the Russian Federation the Judgment of the European Court of Human Rights of 31 July 2014 in the case of *OAO Neftyanaya Kompaniya Yukos v. Russia* in connection with the request of the Ministry of Justice of the Russian Federation

The Constitutional Court of the Russian Federation composed of the President V.D.Zorkin, Judges K.V.Aranovsky, A.I.Boitsov, N.S.Bondar, G.A.Gadzhiev, Yu.M.Danilov, L.M.Zharkova, S.M.Kazantsev, S.D.Knyazev, A.N.Kokotov, L.O.Krasavchikova, S.P.Mavrin, N.V.Melnikov, Yu.D.Rudkin, O.S.Khokhryakova, V.G.Yaroslavtsev,

with participation of representatives of the Ministry of Justice of the Russian Federation as a party having applied to the Constitutional Court of the Russian Federation with the request – G.O.Matyushkin, P.Yu.Ulturgashev and M.A.Melnikova,

guided by Article 125 of the Constitution of the Russian Federation, Item 3^2 of Section 1, Sections 3 and 4 of Article 3, Articles 36, 74, 104^1 – 104^4 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation",

in an open session considered the case concerning the resolution of the question of the possibility to execute in accordance with the Constitution of the Russian Federation the Judgment of the European Court of Human Rights of 31 July 2014 in the case of *OAO Neftyanaya Kompaniya Yukos v. Russia*.

The reason for the consideration of the case was the request of the Ministry of Justice of the Russian Federation. The ground for the consideration of the case was the discovered uncertainty in the question of the possibility to execute in accordance with the Constitution of the Russian Federation the Judgment of the

European Court of Human Rights of 31 July 2014 in the case of *OAO Neftyanaya Kompaniya Yukos v. Russia*.

Having heard the report of Judge-Rapporteur L.M.Zharkova, explanations of the representative of the Ministry of Justice of the Russian Federation G.O.Matyushkin, interventions by those invited to the hearing Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov, Plenipotentiary Representative of the Council of Federation to the Constitutional Court of the Russian Federation A.A.Klishas, Plenipotentiary Representative of the Government of the Russian Federation to the Constitutional Court of the Russian Federation M.Yu.Barshchevsky, Plenipotentiary Representative of the Prosecutor General of the Russian Federation T.A.Vasilyeva, the announced in the session written considerations of barrister J.P.Gardner, who have represented the interests of OAO Neftyanaya Kompaniya Yukos in the European Court of Human Rights and was invited to the session, as well as interventions of the representatives: I.G.Shablinsky from the Presidential Council for the Development of Civil Society and Human Rights, G.V.Vaipan from the autonomous non-commercial organization “Institute of Law and Public Politics” which has prepared an opinion in the case, N.A.Sheveleva from the Saint-Petersburg State University which has prepared an opinion in the case, having examined the submitted documents and other materials, including written observations of former shareholders of OAO Neftyanaya Kompaniya Yukos – companies “Hulley Enerprises Limited” and “Yukos Universal Limited” signed by the Director of these companies T.Osborne, the Constitutional Court of the Russian Federation

e s t a b l i s h e d:

1. The European Court of Human Rights in the Judgment of 31 July 2014 in the case of *OAO Neftyanaya Kompaniya Yukos v. Russia* (application No. 14902/04) (entered into force on 15 December 2014), delivered on the issue of just compensation in addition to the principal Judgment in this case of 20 September

2011 (entered into force on 8 March 2012), obliged Russia, as recognized to have violated Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, to pay to the applicant company's shareholders as an entire amount of the pecuniary damage, including compensation of inflationary losses sustained by it, EUR 1,866,104,634, including EUR 1,299,324,198 for violation of Article 1 of Protocol No. 1 to the Convention, which expressed itself in the retroactive application by courts to the applicant company of Article 113 of the Tax Code of the Russian Federation on three-year limitation period for tax offences, which entailed exaction of penalties from it for the years 2000 and 2001 and sums of the enforcement fee on these penalties, and EUR 566,780,436 for violation of Article 1 of Protocol No. 1 to the Convention, which expressed itself in exaction in the course of enforcement proceedings, instituted in respect of the applicant company, of sums of the enforcement fee which constituted 7% of the entire amount of its debts in payment of taxes, fines and penalties, which is, from the point of view of the European Court of Human Rights, disproportionate to the amount of expenses necessary to ensure enforcement procedures (Paragraphs 20–26, 27–35 and 36).

In the opinion of the Ministry of Justice of the Russian Federation, the Judgment of the European Court of Human Rights of 31 July 2014 in the part obliging Russia to pay the imposed compensation of the pecuniary damage cannot be executed, so far as the assessment of the validity of determination of the limitation period of calling to tax account and the amount of the enforcement fee is based on Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms in the interpretation leading – including with regard to Judgments of the Constitutional Court of the Russian Federation of 30 July 2001 No. 13-П and of 14 July 2005 No. 9-П – to its divergence from Articles 6 (Section 2), 19 (Section 1), 35 (Sections 1 and 3), 55 (Sections 2 and 3) and 57 of the Constitution of the Russian Federation, and awarding compensation of the pecuniary damage to an indefinite range of persons (applicant company's shareholders) contradicts Articles 17 (Section 3), 19 (Section 1), 46 (Section 3) and

55 (Section 1) of the Constitution of the Russian Federation, so far as these persons are not rendered concrete in the Judgment of the European Court of Human Rights, have not been a party in the case of *OAO Neftyanaya Kompaniya Yukos v. Russia* and have not been recognized as victims of conventional violations.

In the course of hearings the representative of the Ministry of Justice also pointed at inadmissibility of payment of the compensation of judicial expenses and expenses, indicated in the Judgment of the European Court of Human Rights of 31 July 2014, referring to the assumption that the counsel defending the applicant company's interests was not an appropriate representative in the case of *OAO Neftyanaya Kompaniya Yukos v. Russia*. However, his reasoning in essence does not pertain to the question of the possibility to execute in accordance with the Constitution of the Russian Federation of the said Judgment of the European Court of Human Rights in this regard, and therefore the Constitutional Court of the Russian Federation refrains from consideration of this issue.

Thus, proceeding from the provisions of Item 3^2 of Section 1 of Article 3, Articles 104^1 – 104^3 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", regulating the right to application with the request to resolve the question of the possibility to execute a decision of an interstate body for the protection of human rights and freedoms, the admissibility of such request and limits of verification, the subject-matter of consideration by the Constitutional Court of the Russian Federation in the present case is the question of the possibility to execute in accordance with the Constitution of the Russian Federation the Judgment of the European Court of Human Rights of 31 July 2014 in the case of *OAO Neftyanaya Kompaniya Yukos v. Russia*, delivered under Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms in its interpretation by the European Court of Human Rights.

2. The Constitutional Court of the Russian Federation has already turned to the question of the possibility to execute judgments of the European Court of Human Rights within the framework of the Russian legal system *inter alia* in

Judgments of 27 March 2012 No. 8-П, 14 July 2015 No. 21-П and of 19 April 2016 No. 12-П. Taking into account legal positions formulated earlier, the Constitutional Court of the Russian Federation with regard to the present case deems it necessary to note the following.

By virtue of Article 15 (Section 4) of the Constitution of the Russian Federation, the Convention for the Protection of Human Rights and Fundamental Freedoms as an international treaty of the Russian Federation is an integral part of its legal system, which obliges the State to execute judgments of the European Court of Human Rights based on the Convention and delivered on complaints against Russia, in respect of persons participating in the case. The Constitutional Court of the Russian Federation in its practice adheres to the approach aimed at undeviating execution of judgments of the European Court of Human Rights, even if their content is based on application of methods of "evolutive interpretation", "priority of the substance over form" and others, which can entail deviation from the positions elaborated by it earlier. Search for variants of execution of the Judgment of the European Court of Human Rights of 4 July 2013 in the case of *Anchugov and Gladkov v. Russia* (Judgment of the Constitutional Court of the Russian Federation of 19 April 2016 No. 12-П), actual reconsideration by the Constitutional Court of the Russian Federation of legal positions on the possibility to grant long-lasting visits to persons convicted to life imprisonment during first 10 years of serving sentence (Judgment of 15 November 2016 No. 24-П) testify to the assumption that the Convention for the Protection of Human Rights and Fundamental Freedoms is, as the European Court of Human Rights puts it, a "living instrument", called upon to take into account objective changes in the field of human rights protection.

At the same time, the interaction of the European conventional and the Russian constitutional legal orders is impossible in the conditions of subordination, so far as only a dialogue between different legal systems is a basis of their fair balance, and the effectiveness of norms of the Convention for the Protection of Human Rights and Fundamental Freedoms in the Russian legal order in many

respects depends on the respect of the European Court of Human Rights for the national constitutional identity. Recognizing the fundamental significance of the European system of the protection of human and civil rights and freedoms, judgments of the European Court of Human Rights being part of it, the Constitutional Court of the Russian Federation is ready to look for a lawful compromise for the sake of maintaining this system, reserving the determination of the degree of its readiness for it, so far as it is the Constitution of the Russian Federation which outlines the bounds of compromise in this issue.

As follows from Articles 4 (Sections 1 and 2), 15 (Sections 1 and 4), 16 (Section 2) and 79 of the Constitution of the Russian Federation, fixing Russia's sovereignty, supremacy and supreme legal force of the Constitution of the Russian Federation, the priority of the basis of the constitutional system of the Russian Federation and establishing ban on handing over by Russia of its sovereign powers in accordance with international treaties, if it entails the restriction of human and civil rights and freedoms and contradicts the basis of its constitutional system, judgments of the European Court of Human Rights based on the interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms do not repeal for the Russian legal system the priority of the Constitution of the Russian Federation. The Convention for the Protection of Human Rights and Fundamental Freedoms as an international treaty of the Russian Federation has in the law-enforcement process stronger legal force than a federal law, but not equal to and not stronger than the legal force of the Constitution of the Russian Federation.

The Constitutional Court of the Russian Federation, resolving the question of the possibility to execute judgments of the European Court of Human Rights as the interstate subsidiary body for the protection of human rights and freedoms must, in accordance with international obligations of Russia, find reasonable balance, so that the decision taken by it should, on the one hand, answer the letter and spirit of a judgment of the European Court of Human Rights, and on the other – not come into conflict with the fundamental principles of the constitutional order of the

Russian Federation and legal regulation of human and civil rights and freedoms established by the Constitution of the Russian Federation.

In solving constitutional-law collisions, which may arise in connection with interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms as an international treaty of the Russian Federation, one must take into account the Vienna Convention on the Law of Treaties, to which Russia is a party and which, also being an integral part of the Russian legal system, ensures the bounds of operation of other international treaties of Russia in the context of the supremacy and the supreme legal force of its Constitution.

Thus, Article 26 of the Vienna Convention fixes the fundamental principle of international law *pacta sunt servanda* (every effective treaty is binding upon the parties to it and must be performed by them in good faith). It is not excluded, however, that an international treaty, which both within its literal meaning and the meaning attributed to it in the course of implementation by an interstate body authorized by the international treaty itself, in accession of a State to it was in accord with its basic law (constitution), subsequently by way of interpretation alone given by this interstate body was rendered concrete in its content in a manner, in which its provisions were attributed meaning diverging from generally binding provisions of international public order (*jus cogens*), to which belong, of course, the principle of the State sovereignty and non-interference in the domestic affairs of states.

Bearing in mind Item 1 of Article 31 and Item 1 of Article 46 of the Vienna Convention on the Law of Treaties, it means that if the European Court of Human Rights, interpreting in the course of consideration of a case any provision of the Convention for the Protection of Human Rights and Fundamental Freedoms, provisions of which are highly abstract, attributes to a term used in it other meaning than its usual one or carries out interpretation contrary to the object and purpose of the Convention as a whole, a State in whose respect the judgment in this case has been delivered is entitled to refuse to execute it as going beyond the obligations, voluntarily taken upon itself when ratifying the Convention.

Accordingly, a judgment of the European Court of Human Rights cannot be regarded as binding for execution by the Russian Federation, if a specific provision of the Convention for the Protection of Human Rights and Fundamental Freedoms, on which this judgment is based, as a result of an interpretation carried out in breach of the general rule of interpretation of treaties, within its meaning comes into conflict with the provisions of the Constitution of the Russian Federation, having their grounds in the international public order and forming the national public order and first of all pertaining to human and civil rights and freedoms and to the basis of the constitutional system of Russia.

The obligation of bodies of State power of Russia in the implementation of international treaties based on the supremacy of its Constitution and contemplating correlation of the Russian Federation's legislation with its obligations under international treaties are recognition, observance and protection of human and civil rights and freedoms as they are defined in the Constitution of the Russian Federation and non-admittance of violations of the basis of the constitutional system. In the context of the adduced provisions of the Vienna Convention on the Law of Treaties this means that in a situation when the very content of a decision of an interstate body for the protection of human rights and freedoms, including in the part of injunctions addressed to Russia as a respondent State and based on the provisions of a respective international treaty, interpreted within the framework of a specific case, unlawfully, from the constitutional-law viewpoint, affects fundamental principles and provisions of the Constitution of the Russian Federation, Russia is entitled as an exception to deviate from fulfilment of the obligations imposed thereon, if such deviation is the only possible way to avoid violation of the Constitution of the Russian Federation.

Proceeding from the adduced legal positions, the Constitutional Court of the Russian Federation cannot support interpretation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms made by the European Court of Human Rights, if it is the Constitution of the Russian Federation (including in its interpretation by the Constitutional Court of the

Russian Federation) as a legal act possessing supreme legal force in Russian legal system, which more fully, as compared with respective provisions of the Convention in their interpretation by the European Court of Human Rights, ensures the protection of human and civil rights and freedoms, including in the balance with rights and freedoms of other people (Article 17, Section 3, of the Constitution of the Russian Federation). Such deviation may take place in exceptional cases and in the presence of sufficiently weighty reasons, namely in revelation of conventional-constitutional collisions, which, as a rule, concern not so much the main content (essence) of some or other rights and freedoms as such, as their concretization by way of interpretation in judgments of the European Court of Human Rights, including if the result of such interpretation is the denial of legal constructions, which have formed in the Russian legal system as a result of exercise by the federal legislator of his prerogatives, the lawfulness of which has been confirmed by acts of constitutional justice, not motivated by the literal meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Thus, by virtue of Articles 4 (Sections 1 and 2), 15 (Sections 1 and 4), 16 and 79 of the Constitution of the Russian Federation and legal positions of the Constitutional Court of the Russian Federation based thereon, a judgment of the European Court of Human Rights cannot be executed by the Russian Federation with regard to measures of individual and general nature imposed thereon, if the interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms on which such judgment is based violates respective provisions of the Constitution of the Russian Federation, pertaining to human and civil rights and freedoms, as well as to the basis of Russia’s constitutional system.

3. The Constitution of the Russian Federation, fixing guarantees of protection of the right of ownership and freedom of entrepreneurial and other economic activity (Articles 8, 34 and 35), at the same time places on everyone the obligation to pay legally established taxes and levies and admits no imparting of retroactive

force to laws, establishing new taxes or deteriorating the position of taxpayers (Article 57).

Rendering concrete the provisions of Article 57 of the Constitution of the Russian Federation, the federal legislator on the basis of its Articles 71 (Items “c”, “g”, “h”, “n”), 72 (Items “b”, “i” of Section 1), 75 (Section 3) and 76 (Sections 1 and 2) determines general principles of taxation and the system of taxes collected to the budget, and in order to ensure the fulfilment by taxpayers of the constitutional obligation to pay legally established taxes and levies envisages also measures of liability for the commission of tax offences, including those connected with the need to compensate damage sustained by the Treasury.

The adduced provisions of the Constitution of the Russian Federation correspond to Article 1 (Protection of property) of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which every natural or legal person is entitled to the peaceful enjoyment of his possessions; no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

As follows from legal positions of the Constitutional Court of the Russian Federation formulated *inter alia* in the Judgments of 17 December 1996 No. 20-П, of 23 December 1997 No. 21-П and of 16 July 2004 No. 14-П, taxes, being a necessary economic base of the existence and activity of the Russian Federation as a law-governed democratic social State, prerequisite of the realization of respective public functions by it, thus have public destination, and the obligation to pay them extends to all taxpayers as a direct requirement of the Constitution of the Russian Federation (Article 57); taxes as the most important source of budget receipts secure exercise of social function of the State, which is obliged when regulating tax legal relations proceed from the need to protect the rights and lawful interests

of all members of society on the basis of the principles of justice, legal equality and equality of rights.

Accordingly, within the meaning of Articles 17 (Section 3), 19 (Sections 1 and 2) and 55 (Sections 2 and 3) of the Constitution of the Russian Federation, measures of liability for the commission of tax offences as a possible restriction of one or another right, introduced by a federal law with constitutionally significant object, must answer the said principles, as well as the criteria of necessity and proportionality following from them, not affecting the very essence, the main content of this right.

4. Considering the case of *OAO Neftyanaya Kompaniya Yukos v. Russia*, the European Court of Human Rights arrived at a conclusion that exaction of penalties for the years 2000 and 2001 and the sums of enforcement fee on these penalties from the applicant company had been unlawful and violating Article 1 of Protocol No. 1 to the Convention, so far as in its respect retroactive application of Article 113 of the Tax Code of the Russian Federation had taken place in the interpretation made in the Judgment of the Constitutional Court of the Russian Federation of 14 July 2005 (Paragraphs 563-575 of the Judgment of 20 September 2011, Paragraphs 20-26 of the Judgment of 31 July 2014).

4.1. In the Judgment of 14 July 2005 No. 9-П, adopted *inter alia* in connection with the request of the Federal Commercial Court of the Moscow circuit, in whose proceedings was the case on exaction of penalty from OAO Neftyanaya Kompaniya Yukos for premeditated non-payment of a number of taxes, the Constitutional Court of the Russian Federation recognized the provisions of Article 113 of the Tax Code of the Russian Federation about a three-year limitation period of calling to account for the commission of a tax offence as not contradicting the Constitution of the Russian Federation.

The Constitutional Court of the Russian Federation arrived at a conclusion that these provisions within their constitutional-law meaning in the system of effective legal regulation may not serve as a ground for the interruption of the current of the limitation period and mean that the current of the limitation period of

calling a person to account for the commission of tax offences ends from the moment of legal registration of an act of a tax checkup, where documentarily confirmed facts of tax offences revealed in the course of the checkup are indicated and reference is made to Articles of the Tax Code of the Russian Federation providing for responsibility for these offences, and if there is no need to draw up such an act – from the moment of adoption of a respective decision by a head (deputy head) of a tax body to institute tax proceedings against a taxpayer; if the taxpayer hinders the exercise of the tax control and carrying out tax checkup, court is entitled to recognize the reasons of the tax body's missing of the limitation period of calling to account as good and exact from the taxpayer tax sanctions for offences, revealed within the time to which the tax checkup was extended, on the basis of the analysis of respective documents.

When adopting this decision, the Constitutional Court of the Russian Federation leaned on the following legal positions:

principles of legal equality and fairness and the principle of commensurateness (proportionality, proportional equality) following from them, expressed in Articles 17 (Section 3), 19 (Sections 1 and 2) and 55 (Section 3) of the Constitution of the Russian Federation, determining ensuring equal amount of legal guarantees to all taxpayers, as applied to operation of the provision on limitation periods on the range of persons contemplate the need of differentiated approach to those taxpayers, who, opposing tax control and tax checkup, would use the provision about the limitation periods contrary to its destination, to the detriment of the rights of other taxpayers and lawful public interests;

if in the event of taxpayer's opposition to the exercise of the tax control and tax checkup tax sanctions could not have been imposed for the only reason of expiry of the three-year limitation period provided for by Article 113 of the Tax Code of the Russian Federation, whereas its interruption or suspension are not admitted, the possibility of abuse of the right not to be called to tax account beyond this period could have arisen contrary to this provision's goal;

taxpayer, who did not submit the necessary documents in time and opposed the exercise of a tax checkup and to whom the norm on limitation period was applied only within its literal meaning, would have received an unlawful advantage before a taxpayer, who committed the same actions, but did not hinder the exercise of the tax checkup and was called to tax account with the observance of the limitation period. As a result, in calling to legal account the principles of equality and justice, commensurateness (proportionality) and inevitability of liability would have been breached and, in the end, the supremacy and supreme legal force of the Constitution of the Russian Federation pertaining to the basis of the constitutional system of the Russian Federation would have been violated contrary to Article 57 of the Constitution of the Russian Federation in the interconnection with its Articles 6 (Section 2), 17 (Section 3), 19 (Sections 1 and 2) and 55 (Section 3).

Having recognized Article 113 of the Tax Code of the Russian Federation as not contradicting the Constitution of the Russian Federation in the interpretation made by it and thereby having retained it in the effective legal regulation, the Constitutional Court of the Russian Federation actually clarified, with direct reference to the provisions of the Constitution of the Russian Federation, the judgment of the moment of expiration of the limitation period of calling to account for the commission of tax offences. Thereby, the Constitutional Court of the Russian Federation confirmed the necessity of the application of this Article, which, as adequate to the essence of a tax offence, meets the requirements of the Constitution of the Russian Federation and excludes the possibility of any other, unconstitutional, interpretation of its provisions, entailing breach of the balance of public and private interests and, accordingly, the principles of equality and justice in the prescription of measures of legal liability for tax offences.

4.2. Revealing the constitutional-law meaning of Article 113 of the Tax Code of the Russian Federation, the Constitutional Court of the Russian Federation, as follows from the legal positions formulated in the Judgment of 14 July 2005 No. 9-П, rendered concrete the provisions of Article 57 of the Constitution of the Russian Federation within their meaning and in the system connection with other basic

constitutional norms on rights and freedoms having direct effect. Proceeding from this, taxpayers' assertions that they could not foresee, what exactly the interpretation of this Article by the Constitutional Court of the Russian Federation would be, in essence would mean defending of the unconstitutional interpretation of its provisions based on the exclusively formal understanding of the norm about the limitation period of calling to account for the commission of tax offences contrary to its real constitutional-law meaning.

Such assertions are actually used to substantiate the necessity of the unfair behavior of a taxpayer with the object to conceal the arrears both in the course of the exercise of measures of tax control and in the audited period of taxation as a whole. Meanwhile, the interpretation of Article 113 of the Tax Code of the Russian Federation made by the Constitutional Court of the Russian Federation could not lead (which is recognized by the European Court of Human Rights itself in the Judgment of 20 September 2011) to the unpredictability of interpretation of material and legal conditions of taxation (for example, the list of operations subject to taxation has not expanded) as applied to the past, it has not entailed alteration of the substance of a tax offence and extended the circle of offences that might entail persecution for the evasion of taxpaying and imposition of penalties.

In essence, not repealing rules about the terms of application of sanctions in connection with evasion of taxpaying, the Constitutional Court of the Russian Federation has revealed in the manner only possible from the constitutional viewpoint the meaning of these rules in order to secure their reasonable and fair application to taxpayers who acted appropriately. Accordingly, there are no reasons to perceive collision with constitutional ban on operation with retroactive force of a law, establishing new taxes or deteriorating the position of taxpayers. Within the meaning of Article 57 of the Constitution of the Russian Federation, this ban extends to laws that change property status of a taxpayer and directly influence the order of his fulfilment of the tax duty, and the order of operation in time of laws introducing liability for tax offences and regulating proceedings in cases on such offences are not enveloped by this constitutional provision, – they

conform to the universal for the public legal liability provisions of Article 54 of the Constitution of the Russian Federation, according to which a law that introduces or increases liability shall not have retroactive force (Section 1); nobody may bear liability for an action, which was not regarded as a crime when it was committed; if, after an offence has been committed, the extent of liability for it is lifted or mitigated, the new law shall be applied (Section 2). These provisions also have limited subject effect.

Elaboration (by way of interpretation in the Judgment of the Constitutional Court of the Russian Federation of 14 July 2005 No. 9-П) of the meaning of Article 113 of the Tax Code of the Russian Federation as applied to specific cases of unfair taxpayers in itself cannot be regarded as a new provision introducing sanction for the hindrance to a tax checkup either. Hence, a taxpayer, in case of drawing up within the bounds of a limitation period of an act of a tax checkup, which establishes the fact of his breach of tax legislation and formulates the State's will to further exact tax sanctions, can foresee that the State will undertake measures to exact tax sanctions from him, so far as the presence of pre-requisites for it was defined and fixed manifestly and in the term, during which the taxpayer could objectively expect application of the State coercion to him in connection with non-fulfilment of the tax duty.

As to OAO Neftyanaya Kompaniya Yukos, revelation of the constitutional-law meaning of Article 113 of the Tax Code of the Russian Federation by the Constitutional Court of the Russian Federation did not entail reconsideration of judicial decisions, adopted in respect of the company and finally entered into legal force, and accordingly did not affect this aspect of guarantees of legal certainty.

4.3. In consideration of the issue of application by courts in the case of OAO Neftyanaya Kompaniya Yukos of Article 113 of the Tax Code of the Russian Federation in the interpretation of the Constitutional Court of the Russian Federation, the specific historical context of the development of regulation of tax relations should be taken into account.

In the conditions of political and economic instability of 90-s of the last century tax legislation and law-applying practices were also instable. The State was compelled to repeatedly increase measures of liability for the commission of tax offences and strengthen control over taxpayers with the help of a new special power structure – tax police, and at the same time search for ways to stimulate taxpayers to fulfil their duty to pay taxes within the framework of a tax amnesty and legalization of their property and income (The Decree of the President of the Russian Federation of 27 October 1993 No. 1773 "On Tax Amnesty in 1993").

Only in the beginning of 2000-s Russia could get down to a full-scale tax reform, which was marked by adoption of the Tax Code of the Russian Federation and tasks of which became, on the one hand, reduction of the tax loading for conscientious taxpayers and reduction of expenses connected with enforcement of the tax legislation, and on the other – ensuring higher level of transparency of tax operations for the State, increase of the effectiveness of the tax administration and narrowing the possibilities for evasion of taxation. In the end, the question was of drawing the Russian tax system near the best models of the world practice. Therefore, the most important for the State at that time was the creation of legal mechanisms of levying taxes and control over their payments, which would allow to secure fulfilment of the tax duty equally by all categories of taxpayers, including the biggest taxpayers, playing the key role in the formation of budgets.

Specificity of the tax regulation, diversity of methods of entrepreneurial activity and constant appearance of new forms of evasion of taxpaying seriously hamper the creation of legislative rules, able to effectively oppose to all possible cases of their violation. As the experience of other states having long practice of counteraction against evasion of taxpaying shows, this problem can hardly be solved by legislative means alone, which determines particular role of judicial doctrine. In the Russian judicial system interpretation of a law by the supreme judicial bodies is also called upon to exert serious influence on the formation of court practice, including in tax disputes.

4.4. The constitutional-law meaning of Article 113 of the Tax Code of the Russian Federation, revealed by the Constitutional Court of the Russian Federation in the Judgment of 14 July 2005 No. 9-П, contemplating in the event of missing the limitation period of calling to account for the commission of tax offences which courts must take account of consequences of unlawful actions of a taxpayer in conducting measures of tax control, is based on the interpretation of Article 57 of the Constitution of the Russian Federation as contemplating such duty, which was earlier repeatedly confirmed by the Constitutional Court of the Russian Federation.

In the Judgment of 12 October 1998 No. 24-П and the Ruling of 25 July 2001, adopted upon the application of the Ministry of the Russian Federation on Taxes and Levies on explanation of this Judgment, the Constitutional Court of the Russian Federation was leaning on the principle of conscientiousness of taxpayers as one of the most important elements of the constitutional-law regime of the regulation of tax relations and public legal order as a whole. In connection with the question of whether a tax written off by a bank and in reality not transferred to the budget may be regarded as paid, in the absence of respective monetary resources on the bank's correspondent account, if they were formally entered by the bank on the taxpayer's accounts, as well as in the absence of monetary resources on the taxpayer's settlement account, the Constitutional Court of the Russian Federation explained that in such a case tax bodies are obliged to prove the disclosed bad faith of taxpayers and banks in the procedure established by the Tax Code of the Russian Federation; it follows from the recognition of such banks and taxpayers as unfair that the legal position of the Constitutional Court of the Russian Federation, according to which the constitutional duty of every taxpayer is regarded as fulfilled at the moment of writing off resources for debt payment from the settlement account of the taxpayer by the bank, does not extend to them, so far as, in essence, they have evaded of the fulfilment of this duty; the State in the person of its tax and other bodies must exercise control over the order of the discharge of the public-law function of transfer of tax payments to the budget by banks; in this connection, in

the event of non-arrival of respective monetary resources to the budget, tax bodies are entitled, in order to establish bad faith of taxpayers and with a view to ensuring balance of State and private interests, to carry out the necessary checkup and lay claims with courts of arbitration, securing the arrival of taxes to the budget, including claims on recognition of deals as invalid and on exaction of everything received under such deals to the State income.

This legal position, as it is pointed out in the Ruling of the Constitutional Court of the Russian Federation of 10 January 2002 No. 4-O, has a general character and concerns all provisions determining the moment of fulfilment of a tax duty by a legal person. With this conclusion in mind, the Constitutional Court of the Russian Federation in the Ruling of 8 April 2004 No. 168-O pointed out that the introduction of such condition of reception by a taxpayer to deduction of VAT sums in calculation of the final tax sum subject to be paid to the budget as mandatory character of payment of bills used in settlements with providers by monetary resources, is directed at creation of direct dependence of the realization by a taxpayer of the right to deduction of VAT sums on his discharge of the obligation to carry out actual expenses for payments of the deducted sums of the tax; absence of the taxpayer's obligation to secure – in order to accept to deduction of calculated tax sums – by real counter payments bills, which are handed over on account of payments for goods (works, services) acquired from the providers, would mean absence of grounds for the deduction itself of the calculated tax sums, and, besides, would allow unfair taxpayers with the help of instruments used in civil law relations to create schemes of illegal enrichment at the expense of budgetary funds, which would lead to breach of public interests in the field of taxation and to violation of constitutional rights and freedoms of other taxpayers.

Thus, already from the beginning of 2000-s taxpayers – professional participants of entrepreneurial activity could and had to see the possibility of the approach to the understanding of Article 113 of the Tax Code of the Russian Federation, which found reflection in its constitutional-law interpretation made by the Constitutional Court of the Russian Federation in the Judgment of 14 July 2005

No. 9-П and contemplating that courts must take account of unlawful behavior of a taxpayer when judging the consequences of a tax body's missing the limitation period of calling to account for the commission of tax offences.

4.5. The European Court of Human Rights by the Judgment of 31 July 2014 recognized the violation by Russia of proprietary rights of OAO Neftyanaya Kompaniya Yukos, which expressed itself in causing the applicant company pecuniary damage. Meanwhile, of principal importance is the fact that pecuniary losses became the result of illegal actions of the company itself, and the State was compelled to apply measures of liability, including administrative ones, in order to compensate pecuniary damage caused to it.

As follows from court acts adopted in respect of OAO Neftyanaya Kompaniya Yukos, the company, using refined illegal schemes, showed itself as a malicious non-payer of taxes and ceased to exist leaving a serious unliquidated debt. Company's activity, bearing in mind its place in country's economy, even if we leave without legal analysis the question of fairness of methods of company's assets formation in a strategically important and one of most profitable branches of Russian economy, thanks to which it became one of the biggest economical subjects (and, accordingly, the biggest potential taxpayers) in Russia, had a law-ruining effect, hindering stabilization of constitutional-law regime and public legal order. Nor did the European Court of Human Rights, delivering the Judgment of 20 September 2011, deny the presence of a large-scale schemes of evasion of taxpaying in the company's activity.

In this context, payment of such a huge monetary sum, imposed by the European Court of Human Rights, to former shareholders of a company having built illegal schemes of evasion of taxation, their heirs and legal successors from the budget system, which was regularly not receiving from it in due amount enormous tax payments, necessary *inter alia* for the fulfilment of public obligations before all citizens, getting over financial and economic crisis, in itself contradicts constitutional principles of equality and justice in tax relations (Article

17, Section 3; Article 19, Sections 1 and 2; Article 55, Sections 2 and 3; Article 57 of the Constitution of the Russian Federation).

It is the substance of the activity of OAO Neftyanaya Kompaniya Yukos as a legal person, and not only the facts of fraudulent behavior of the members of managing bodies of the company and some of its shareholders, established in the procedure of criminal persecution, and the presence by the moment of its liquidation of non-fulfilled obligations, including those before the budget, in the amount significantly exceeding the amount of the imposed compensation, which, however, introduce cumulative effect in the appraisal of the possibility to execute in accordance with the Constitution of the Russian Federation the Judgment of the European Court of Human Rights of 31 July 2014, determines the non-conformity of the imposition of compensation to constitutional principles of equality and justice and, consequently, impossibility to pay it from the point of view of the Constitution of the Russian Federation.

Violation of these principles obviously expresses itself also in the fact that the European Court of Human Rights ordered to pay the imposed compensation to shareholders of OAO Neftyanaya Kompaniya Yukos, their legal successors and heirs. However, majority shareholders, who, if one follows the European Court of Human Rights' logic, have the right to the larger part of the imposed compensation, are exactly those persons who participated in company's illegal activity. But even if shareholders did not directly participate in building illegal schemes which led to negative consequences for the company and in the end to discontinuance of its activity, they received dividends, formed, *inter alia*, at the expense of resources, subject, with honest taxpaying, to transfer to the budget. Losses incurred by shareholders (if one bears such in mind from the standpoint of general results of company's activity, inadmissibly ignoring in so doing the fact of the debt before public and private creditors by the moment of its liquidation) are thus the result of their non-exercise of corporate rights reasonably and conscientiously in their own interests and in the interests of the legal person, whereas, as applied to participation in shareholder equity – proceeding from the

legal nature of economic societies of this kind as an element of the public legal order having constitutional basis in the principles of inviolability of property and freedom of contract (Articles 8, 34 and 35 of the Constitution of the Russian Federation) – ordinary business (entrepreneurial) risk is joined by risks of unreasonable and unfair behavior of persons, carrying out functions of bodies of management of a legal person, acting on its behalf and forming its will.

Non-application of Article 113 of the Tax Code of the Russian Federation in its constitutional-law meaning revealed by the Constitutional Court of the Russian Federation in the Judgment of 14 July 2005 No. 9-П in the case of OAO Neftyanaya Kompaniya Yukos at the stage of its calling to account for tax offences – especially in the specific situation of unprecedented in its scale evasion of taxation in the conditions of the State's critical need of budgetary funds for exit from the economic crisis and undertaking of extremely necessary measures of social protection and support of a significant part of citizens, – would mean, in essence, not only suspension of the effect of Article 57 of the Constitution of the Russian Federation, but also violation of the principles of equality and justice following from its Articles 17 (Section 3), 19 (Sections 1 and 2) and 55 (Sections 2 and 3).

In the concrete historical circumstances, which required from the State to optimize tax legislation and law-applying practices in order to narrow the possibilities to evade taxation, OAO Neftyanaya Kompaniya Yukos (having highly professional lawyers at its disposal) should not have counted on application of the branch norm on the limitation period of calling to account for tax offences in the understanding, comfortable for realization of unlawful goals, but diverging from its constitutional-law meaning. Especially as the constitutional-law interpretation of this provision, made by the Constitutional Court of the Russian Federation (contemplating discontinuance of the current three-year limitation period from the moment of legal registration of an act of a tax checkup and the possibility of court's recognition of good reasons of missing the limitation period by tax bodies in the event of a taxpayer's hindrance to the exercise of tax control), corresponded

the authentic will of the federal legislator to secure strict fulfilment of the tax duty in the context of the established constitutional-law regime of taxation. The constitutional-law meaning of Article 113 of the Tax Code of the Russian Federation with regard to the predetermination in respective cases the need of retroactive application of penalties and payment of the enforcement fee on these penalties (in the case of OAO Neftyanaya Kompaniya Yukos – for the years 2000 and 2001), as based directly on the provisions of the Constitution of the Russian Federation, admits no other approach for the law enforcers, including courts.

Therefore, coming for OAO Neftyanaya Kompaniya Yukos of adverse consequences of the constitutional-law interpretation of Article 113 of the Tax Code of the Russian Federation – with account taken of the principle of conscientiousness of a taxpayer – cannot be regarded as unbalanced, unforecastable and arbitrary. Accordingly, Russia's refusal to exact tax sanctions from the company for tax offences committed prior to entering of the Judgment of the Constitutional Court of the Russian Federation of 14 July 2005 No. 9-П into force, which the European Court of Human Rights insists on in the Judgment of 20 September 2011, would contradict the Constitution of the Russian Federation, which Article 57 in the interconnection with its Articles 17 (Section 3), 19 (Sections 1 and 2) and 55 (Sections 2 and 3) places on the State the obligation to ensure that every taxpayer pays taxes on the basis of the principles of equality and justice.

Thus, execution in accordance with the Constitution of the Russian Federation of the Judgment of the European Court of Human Rights of 31 July 2014 in the case of *OAO Neftyanaya Kompaniya Yukos v. Russia*, adopted under Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms in its interpretation by the European Court of Human Rights in the part, obliging Russia to pay applicant company's shareholders as a compensation for exaction of penalties from it for the years 2000 and 2001 and payment of sums of the enforcement fee on these penalties EUR 1,299,324,198, is impossible.

5. In the Judgment of 31 July 2014 in the case of *OAO Neftyanaya Kompaniya Yukos v. Russia* the European Court of Human Rights also ascertained breach of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms with regard to enforcement proceedings in respect of the applicant company. Referring to its conclusions contained in the principal Judgment of 20 September 2011, the European Court of Human Rights noted: the domestic authorities failed to strike a fair balance between the legitimate aim of the enforcement proceedings in respect of the applicant company and the measures employed, by being inflexible regarding the pace of the proceedings, obliging the company to pay excessive fees and failing to give explicit account of all the relevant factors (Paragraph 27); even if it cannot be said that the above-cited defects alone caused the applicant company's liquidation, they nevertheless seriously contributed to it, directly resulting in pecuniary damage satisfying the causality criteria of Article 41 of the Convention (Paragraph 29); the 7% enforcement fee in connection with the entire amount of tax-related liability of the applicant company was by its nature unrelated to the actual amount of the enforcement expenses borne by the bailiffs, and therefore the resulting sum was completely out of proportion to the amount of the enforcement expenses which could have possibly been expected to be borne or had actually been borne by the bailiffs; because of its rigid application, instead of inciting voluntary compliance, it contributed very seriously to the applicant company's demise (Paragraphs 30 and 31).

Believing that the enforcement fee of 4% of the entire amount of tax-related liability would be fair, the European Court of Human Rights has assessed the pecuniary damage to the applicant company resulting from the violation of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms at EUR 566,780,436 (taking into account the inflation rate).

5.1. Solving in the Judgment of 30 July 2001 No. 13-П the question of constitutionality of the provision on the enforcement fee amounting to 7% of the

exacted sum or value of a debtor's property, established by Item 1 of Article 81 of the Federal Law No. 119-ФЗ "On Enforcement Proceedings" and applied in the case of OAO Neftyanaya Kompaniya Yukos, the Constitutional Court of the Russian Federation has formulated the following legal positions:

according to the literal meaning of this provision, the said monetary sum is defined exactly as an enforcement fee. Meanwhile, in the list of taxes and levies, which are established, altered or abrogated by the Tax Code of the Russian Federation or in accordance with it, this fee is not indicated and, consequently, it does not belong to taxes and levies within the meaning of Article 57 of the Constitution of the Russian Federation. Neither is it a State duty. At the same time, the enforcement fee is ascribed to administrative payments and levies;

within the meaning of Article 81 of the Federal Law "On Enforcement Proceedings" in the system connection with its other Articles, the sum of the fee, envisaged in this norm and calculated as 7% of monetary resources exacted on enforcement document belongs, in essence, to measures of administrative coercion in connection with non-observance of legitimate requirements of the State. Moreover, this measure is not a law-restoring sanction, which would ensure fulfilment by the debtor of his duty to compensate expenses connected with enforcement actions as compulsory execution of court and other acts (as it takes place in exaction of expenses on enforcement actions from the debtor), but is a sanction of a penal character, i.e. placement on the debtor of the obligation to make a certain additional payment as a measure of his public law responsibility arising in connection with an offence committed by him in the course of the enforcement proceedings;

the enforcement fee as a penal sanction has signs of an administrative penal sanction: it has fixed monetary expression established by law, is exacted in a compulsory way, is legally registered by a resolution of a competent official, is levied in the event of the commission of an offence and is entered to the budget and to non-budgetary fund, the resources of which are State property.

The Constitutional Court of the Russian Federation has also noted that by the moment of adoption of the Federal Law "On Enforcement Procedure" effectiveness of the enforcement proceedings in the Russian Federation had come down; non-execution and untimely execution of decisions of courts and other competent bodies created the threat to guarantees of State protection of constitutional rights and freedoms, legality and legal order as a whole; in such circumstances the federal legislator – within the meaning of Articles 55 (Section 3) and 57 of the Constitution of the Russian Federation – was entitled to establish a special provision, under which a sanction in the form of penalties is imposed on a debtor in the event of his guilty non-execution of an enforcement document of a pecuniary nature within time, established for its voluntary execution; establishment of concrete amounts of penalties for violation of rules of compulsory execution of court or other acts is a prerogative of the federal legislator, but they – since penal exaction is connected with restriction of the constitutional right of property – must in any case meet the criterion of commensurateness (proportionality), following from Article 55 (Section 3) of the Constitution of the Russian Federation.

Proceeding from this, the Constitutional Court of the Russian Federation arrived at a conclusion that Item 1 of Article 81 of the Federal Law "On Enforcement Proceedings" contains, in essence, a special provision on administrative liability for breach of the legislation on enforcement proceedings; this Article – within its meaning in the interconnection with Articles 85 and 87 of the said Federal Law – must be applied with the observance of the principles of fairness of the punishment, its individualization and differentiation following from the Constitution of the Russian Federation; therefore, the amount of the sanction established therein (7% of the exacted sum) represents only admissible maximum of it, the upper border, and with regard to the character of the committed offence, the amount of damage caused, the degree of guilt of the offender, his property status and other substantial circumstances may be reduced by the law enforcer; otherwise incommensurately large penalty can turn from the measure of influence into an instrument of suppression of economic independence and initiative,

excessive restriction of the freedom of entrepreneurship and the right of ownership, which by virtue of Articles 34 (Section 1), 35 (Sections 1-3) and 55 (Section 3) of the Constitution of the Russian Federation is inadmissible.

Thus, according to the legal position of the Constitutional Court of the Russian Federation expressed in the Judgment of 30 July 2001 No. 13-П, the enforcement fee is an administrative sanction, to which the requirements of commensurateness (proportionality) and justice may be fully applied. This sanction, as based on Article 57 of the Constitution of the Russian Federation in the interconnection with its Articles 17 (Section 3), 19 (Sections 1 and 2) and 55 (Sections 2 and 3), within its meaning in the Russia's legal system pursues penal objects, and accordingly, its amount, not tied up with expenses on compulsory execution, must be determined proceeding from circumstances of a specific case, the degree of guilt of a debtor and other circumstances, significant for calling to tax account.

In connection with the adoption of the Federal Law of 2 October 2007 No. 229-ФЗ "On Enforcement Proceedings" legislative provisions, which were the subject-matter of consideration by the Constitutional Court of the Russian Federation in the Judgment of 30 July 2001 No. 13-П, lost their force, but conclusions contained therein, as pointed out in the Ruling of the Constitutional Court of the Russian Federation of 2 April 2015 No. 654-O, accord with the provisions of Article 112 of the said Federal Law effective today and envisaging, in particular, that the debtor has the right to turn to court in an established procedure with an application on contesting a bailiff's resolution on exaction of the enforcement fee, with a claim to postpone or spread its exaction, reduce its amount or release from exaction of the enforcement fee (Section 6), and court is entitled, with regard to the degree of guilt of the debtor in non-execution of an enforcement document in time, his property status, other substantial circumstances to postpone or spread exaction of the enforcement fee, as well as reduce its amount, but not more than by ¼ of the amount established in accordance with Section 3 of this Article; in the absence of grounds for the liability for breach of obligations,

established by the Civil Code of the Russian Federation, court is entitled to release the debtor from exaction of the enforcement fee (Section 7).

5.2. Item 1 of Article 81 of the Federal Law of 21 July 1997 No. 119-ФЗ "On Enforcement Proceedings" was applied in the case of OAO Neftyanaya Kompaniya Yukos in the interpretation made by the Constitutional Court of the Russian Federation in the Judgment of 30 July 2001 No. 13-П. Therefore, courts, had they observed grounds for it with regard to circumstances of the case, could have estimated the sum of the enforcement fee as less than 7% of the entire amount of the tax-related liability (whereas, unlike the regulation in effect today, the maximum amount of reduction of the rate of the enforcement fee was not marked before), so far as they had a proper normative legal base for it, allowing, proceeding from the established facts and assessment of proofs submitted to them, to take a decision, answering constitutional criteria of justice and proportionality.

The prescription of the sum of the enforcement fee in the maximum admissible amount, as well as the pace of the enforcement proceedings in the case of levying unpaid taxes, fines and penalties from OAO Neftyanaya Kompaniya Yukos as a whole could be determined, among other things, by the revealed systematic, large-scale and long-lasting offences on the company's part, connected with regular use of schemes, which allowed it to respectively re-distribute monetary resources and property, and active hindrance to tax checkups, engendering the risk to lose property base of execution of court acts. Evasion of OAO Neftyanaya Kompaniya Yukos of taxpaying in such an unprecedented scale directly threatened the principles of the law-governed democratic social State, which obliged the law enforcer to undertake within the framework of the enforcement proceedings as effective measures as possible in order to overcome the opposition of unfair taxpayers.

Accordingly, the conclusion on the impossibility, by virtue of the constitutional principles of equality and justice, to execute the Judgment of the European Court of Human Rights of 31 July 2014 in the case of *OAO Neftyanaya Kompaniya Yukos v. Russia* with regard to payment to the applicant company of

the compensation for exaction of penalties from it for the years 2000 and 2001 and payment of sums of the enforcement fee on these penalties extends also to the payment of compensation for exaction from the applicant company of an incommensurate (disproportionate), as deemed the European Court of Human Rights, sum of the enforcement fee.

6. Guaranteeing State, including judicial, protection of human and civil rights and freedoms, the Constitution of the Russian Federation at the same time fixes the right of everyone to protect his rights and freedoms by all means not prohibited by law (Articles 45 and 46). Realizing his right to court protection in tax disputes, an interested person independently expresses his will for institution of the judicial consideration of a case by way of a respective application or for refusal of such consideration.

According to Article 46 (Section 3) of the Constitution of the Russian Federation, everyone has the right in accordance with international treaties of the Russian Federation to apply to interstate bodies for the protection of human rights and freedoms if all available internal means of legal protection have been exhausted. This constitutional provision corresponds to Article 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which the European Court of human Rights may only deal with the matter after all domestic remedies have been exhausted.

Since OAO Neftyanaya Kompaniya Yukos turned down claims to reduce the sum of the enforcement fee (Ruling of the Court of Arbitration of the City of Moscow of 3 February 2005), the Ministry of Justice of the Russian Federation assumes that the condition, granting the right to apply in accordance with the Constitution of the Russian Federation and the Convention for the Protection of Human Rights and Fundamental Freedoms to the European Court of Human Rights, had not been observed by the applicant company, and therefore, the European Court of Human Rights should not have considered the question of proportionality of the enforcement fee applied to it. Besides, in the opinion of the Ministry of Justice of the Russian Federation, since the applicant company’s

shareholders as recipients of the imposed compensation have not been rendered concrete in the Judgment of the European Court of Human Rights, have not been a party in the case of *OAO Neftyanaya Kompaniya Yukos v. Russia* and have not been recognized as victims of conventional violations, and the person who represented the applicant company in the European Court of Human Rights had no appropriate powers, payment of the sums of compensation of the pecuniary damage to an indefinite range of persons (former applicant company's shareholders) would lead to a direct breach of the constitutional principles of equality of rights and justice, as well as of the right to apply to an interstate body for the protection of human and civil rights and freedoms, as it is defined in the Constitution of the Russian Federation (Article 46, Section 3) and the Convention for the Protection of Human Rights and Fundamental Freedoms (Articles 34 and 35).

However, the Constitutional Court of the Russian Federation deems it necessary to refrain from the consideration of these and other procedural aspects of the case of *OAO Neftyanaya Kompaniya Yukos v. Russia*, to which the Ministry of Justice of the Russian Federation paid attention; other would mean the appraisal of the Judgment of the European Court of Human Rights from the standpoint of validity of procedural rules applied in its adoption and procedural decisions delivered on their base.

As to the existing, in the opinion of the Ministry of Justice of the Russian Federation, uncertainty with regard to the procedure and proportions of the payment, the range of recipients of the compensation imposed in accordance with the Judgment of the European Court of Human Rights of 31 July 2014, as well as its legal nature, then, since this payment in accordance with the Constitution of the Russian Federation is impossible in principle, resolution of these questions by the Constitutional Court of the Russian Federation in the present case is not required.

7. The Constitutional Court of the Russian Federation, proceeding from the fundamental significance of the European system of the protection of human and civil rights and freedoms, judgments of the European Court of Human Rights being

part of it, deems it necessary to look for a lawful compromise for the sake of maintenance of this system (Judgment of 14 July 2015 No. 21-П).

Not recognizing as conforming to the Constitution of the Russian Federation the imperative obligation to execute the Judgment of the European Court of Human Rights of 31 July 2014, the Constitutional Court of the Russian Federation nevertheless does not exclude the possibility to manifest good will of the Russian Federation in determining the bounds of such compromise and mechanisms of its attainment in respect of shareholders of OAO Neftyanaya Kompaniya Yukos, who suffered from the unlawful actions of the company and its management.

In this connection, the Government of the Russian Federation is competent to initiate the consideration of the question of payment of respective sums in the procedure of distribution of the newly revealed property of a liquidated legal person provided for by the Russian and foreign legislation, which may be carried out only after settlements with creditors and undertaking of measures of revelation of other property (for example, concealed on foreign accounts). However, such payment, proceeding from the legal positions expressed in the present Judgment, in any event must not affect budget receipts and expenditures, as well as the property of the Russian Federation.

Proceeding from the expounded above and guided by Articles71, 72, 74, 75, 78, 79 and 104^4 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation

h o l d s:

1. To recognize as impossible the execution in accordance with the Constitution of the Russian Federation, its Article 57 in the interconnection with Articles 15 (Sections 1, 2 and 4), 17 (Section 3), 19 (Sections 1 and 2), 55 (Sections 2 and 3) and 79, of the Judgment of the European Court of Human Rights of 31 July 2014 in the case of *OAO Neftyanaya Kompaniya Yukos v. Russia*, delivered under Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms in its interpretation by the European

Court of Human Rights, according to which as a result of Russia's breach of Article 1 of Protocol No. 1 to the Convention – with regard to the retroactive application in respect of the applicant company of penalties for the years 2000 and 2001 and the enforcement fee on these penalties, as well as with regard to the enforcement proceedings, in the course of which disproportionate in its character enforcement fee in the amount of 7% of the entire sum of its debts related to the payments of taxes, fines and penalties was exacted from it – the applicant company sustained pecuniary damage, including compensation of the inflationary losses, for the entire sum of EUR 1,866,104,634, which Russia is to pay this company's shareholders, their legal successors and heirs.

2. The present Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable and shall not require confirmation by other authorities and officials.

3. The present Judgment is subject to immediate publication in Rossiyskaya Gazeta, the Collection of Laws of the Russian Federation and on the official Internet-portal of legal information *(www.pravo.gov.ru.)* The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court
of the Russian Federation.

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