„Some domestic legal systems have an equivalent to Article 25 (WVK), *in the sense that there is a specific provision in the domestic laws or constitution regulating provisional application. Examples are for instance the Netherlands, the Russian Federation and Belarus. By contrast, in many other legal systems, it would appear that provisional application has not found its place in the written legal framework and instead is a matter of uncodified practice. Whether codified or uncodified, broadly three approaches to provisional application can be distinguished in domestic law: either provisional application is* ***prohibited****;* ***allowed****; or* ***allowed under certain conditions****. Several States have expressed the view that provisional application is in principle prohibited by their constitution or not accepted by their legal system, including Austria; Luxembourg; Italy; Portugal; Egypt; as well as several Latin-American States such as Brazil; Colombia; Costa Rica, and Mexico. A variant of this position is that provisional application is possible only in exceptional circumstances, as is the case, for instance, in Belgium, Colombia, France, Greece and Turkey. Others, such as Finland, Spain, the Slovak Republic and Bosnia Herzegovina, state that provisional application is generally allowed. Again in other systems, provisional application is allowed but subject to certain conditions, this is the case, for example, in Slovenia, the Netherlands, Denmark, Lithuania, Canada etc. This variety of approaches towards provisional application in internal law shows that it is for each State to decide, and thus that it is a matter of internal law, whether to allow provisional application and if so upon what conditions. Furthermore, the relatively great number of States in which provisional application is in principle prohibited or in which recourse to the mechanism can only be had in exceptional circumstances suggests that provisional application, at least in some domestic legal systems, gives rise to considerable difficulties.“*[312]

Somit zeigt sich, dass eine Einbeziehung der vorläufigen Anwendung in das innerstaatliche Recht sehr unterschiedlich ausgeprägt sein kann und eine Kodifizierung dieser auch nicht in jedem Staat vorgenommen wurde. Sehr interessant ist sicher auch ein einschlägiges Verbot der vorläufigen Anwendung einzelner Staaten. Darauf wird weiter unten näher eingegangen.

Vereinfacht gesagt, hatte das Schiedsgericht im Yukos-Fall zu entscheiden, ob Art. 45 Abs. 1 ECT auch auf den Inhalt der Charta Anwendung findet, also ob ein Vorbehalt gilt, wenn einzelne Bestimmungen der Charta dem innerstaatlichen Recht eines Staates entgegenstehen oder ob dieser Vorbehalt lediglich die gesamte vorläufige Anwendung der Charta betrifft, ein allfälliges innerstaatliches Verbot (wie

[312] *Quast Mertsch*, Provisionally Applied Treaties, 2012, S. 62 – 63; vgl. dazu auch *Ishikawa*, Domestic law, 2016, S. 277.