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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**RUSSIAN FEDERATION**

**DRAFT OPINION**

**ON THE DRAFT AMENDMENTS TO THE CONSTITUTION  
(AS SIGNED BY THE PRESIDENT OF THE RUSSIAN FEDERATION  
ON 14 MARCH 2020)**

**RELATED TO THE EXECUTION IN THE RUSSIAN FEDERATION  
OF DECISIONS BY THE EUROPEAN COURT OF HUMAN RIGHTS**

**On the basis of comments by:**

**Mr Nicos ALIVIZATOS (Member, Greece)**

**Ms Claire BAZY-MALAUERIE (Member, France)**

**Mr Iain CAMERON (Member, Sweden)**

**Ms Monika HERMANN (Substitute Member, Germany)**

**Mr Martin KUIJER (Substitute Member, the Netherlands)**

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## I. Introduction

1. By letter of 29 January 2020, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly (hereinafter, “the Legal Affairs Committee”) requested an opinion of the Venice Commission on “the draft amendment to the Constitution of the Russian Federation (as proposed by the President of the Russian Federation on 15 January 2020) according to which, international agreements and treaties, as well as decisions by international bodies may apply only to the extent that they do not entail restrictions on the rights and freedoms of people and citizens, and do not contradict the Constitution”.

2. In its letter, the Committee on Legal Affairs and Human Rights (hereinafter “the Legal Affairs Committee”) clarified that it requests the Venice Commission “to assess whether the amendment proposed by the President of the Russian Federation is compatible with Article 46 paragraph 1 of the European Convention on Human Rights (concerning the binding force and execution of judgments of the European Court of Human Rights), and other relevant norms of international law, as well as on whether it is compatible with the current wording of Article 15 of the Constitution of the Russian Federation (concerning the precedence of international agreements over national law)”. The Legal Affairs Committee specified that its request is part of the fact-finding for the 10<sup>th</sup> report on “The implementation of judgments of the European Court of Human Rights”.

3. Mr Nicos Alivizatos, Ms Claire Bazy-Malaurie, Mr Iain Cameron, Ms Monika Hermanns and Mr Martin Kuijer acted as rapporteurs for this opinion.

4. On 2-3 March 2020, a delegation of the Commission composed of Mr Nicos Alivizatos, Ms Claire Bazy-Malaurie, and Ms Monika Hermanns, accompanied by Ms Simona Granata-Menghini, Deputy Secretary, and Ms Sevim Sönmez, legal officer at the Secretariat, travelled to Moscow and had meetings with the Director of the Institute of Legislation and Comparative Law under the Government of the Russian Federation (ILCL), the Chairman of the Federation Council Committee on Constitutional Legislation and State Construction and co-chair of the Working Group on preparing proposals for amendments to the Constitution of the Russian Federation, the Deputy Chairman of the State Duma, the Chairman of the State Duma Committee on International Affairs, the Chairman of the Federation Council Committee on International Affairs, the Head and Scientific Supervisor of the ILCL, representatives of the scientific community, as well as with civil society. The Commission is grateful to the ILCL for the excellent organisation of this visit.

5. The Commission has analysed the draft amendments to Articles 79 and 125 of the Constitution as adopted by the State Duma and the Council of the Federation and subsequently signed by the President on 14 March 2020. This opinion was prepared in reliance on the unofficial English translation of these amendments (see CDL-REF(2020)021). The translation may not accurately reflect the original version on all points.

6. *This opinion was drafted on the basis of comments by the rapporteurs and the results of the visit to Moscow. It was adopted by the Venice Commission on....., through a written procedure which replaced the ... Plenary session in Venice, due to the COVID-19 disease.*

## II. Scope of the Opinion

7. This Opinion was requested as part of the fact-finding for a report on the implementation of the judgments of the European Court of Human Rights (hereinafter, “ECtHR”); the Venice Commission stresses once again in this respect that it is not competent to assess the execution of specific judgments of the ECtHR, including when the Constitutional Court has issued an

unenforceability ruling. As already emphasised such assessment is of the exclusive competence of the Committee of Ministers of the Council of Europe<sup>1</sup>.

8. Furthermore, it is not for the Venice Commission to assess the compatibility of the proposed draft amendments with Article 15 (4) of the Constitution of the Russian Federation. It is up to the Constitutional Court to assess this within its legal competences (for the actual assessment of this matter by the Constitutional Court, see CDL-REF(2020)022 and paragraph 34 below). The Commission will therefore concentrate its analysis on the proposed draft amendments which are related to the implementation in the Russian Federation of decisions adopted by “interstate bodies” adopted on the basis of provisions of international treaties ratified by the Russian Federation (proposed draft amendments to Articles 79 and 125 of the Constitution).

9. The Commission recalls that these draft amendments largely correspond to the amendments to Federal law of the Russian Federation no. 7-KFZ (CDL-REF(2016)006), introducing amendments to Federal Constitutional Law no. 1-FKZ of 21 July 1994 on the Constitutional Court of the Russian Federation (CDL-REF(2016)007) which entered into force on 15 December 2015. These amendments had empowered the Constitutional Court to declare an international decision “non-executable” if the ruling is deemed to be incompatible with the “foundations of the constitutional system of the Russian Federation”. The Venice Commission assessed those amendments at the request of the Legal Affairs Committee and refers to its findings in these opinions, which remain valid.<sup>2</sup>

10. The most relevant changes contained in the proposed draft amendments, at the focus of the present Opinion:

- declare that decisions of interstate bodies adopted on the basis of provisions of international treaties of the Russian Federation which collide with the Constitution may not be executed in the Russian Federation (proposed draft amendment to Article 79 of the Constitution);
- raise to the Constitutional level the competence of the Constitutional Court to *resolve matters concerning the possibility of enforcing decisions* of interstate bodies adopted on the basis of international treaties ratified by the Russian Federation, in case they contradict the Constitution of the Russian Federation (proposed draft amendment to Article 125 § 5 b)).

11. Furthermore, it proposed to amend some provisions concerning the Constitutional Court which may be of relevance for the matters addressed in this report; in particular, it is proposed to give the Federation Council the power to dismiss the judges of the Constitutional Court upon proposal (instead of by no less than two thirds of the acting judges of the Constitutional Court, as is currently provided by Article 18 Section 4 of the Federal Constitutional Law on the Constitutional Court) of the President of the Russian Federation “in the event of conduct by them that discredits the honour and dignity of a judge, as well as in other cases provided for in federal

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<sup>1</sup> CDL-AD(2016)016), § 22.

<sup>2</sup> CDL-AD(2016)016, Final Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court, and its Appendix, CDL- AD(2016)005, Interim Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation.

constitutional law that are indicative of judges' inability to discharge their duties" (proposed draft amendment to Article 83<sup>3</sup> and 102<sup>4</sup> of the Constitution).

### III. Background information

#### A. Adoption of the proposed draft amendments

12. On 15 January 2020, in his annual address to the Federal Assembly, the President of the Russian Federation announced a set of amendments to the Constitution.<sup>5</sup> Considering that the proposed amendments concern substantial changes in the political system and the work of executive, legislative and judicial branches, he also announced the necessity to hold a vote of Russian citizens. The same day, the President of the Russian Federation ordered to form a working group to draft proposals for amending the Constitution and approved the lists of its members. The group was composed of 75 politicians, legislators, scholars and public figures<sup>6</sup>. The draft amendments to the Constitution have been prepared based on the proposals submitted by the working group<sup>7</sup>.

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<sup>3</sup> Article 83: The President of the Russian Federation shall: [...] e(3). Submit to the Council of the Federation a request for the termination, in accordance with federal constitutional law, of the powers of the President of the Constitutional Court of the Russian Federation, the Deputy President of the Constitutional Court of the Russian Federation and judges of the Constitutional Court of the Russian Federation, the President of the Supreme Court of the Russian Federation, deputies to the President of the Supreme Court of the Russian Federation and judges of the Supreme Court of the Russian Federation, presidents, deputy presidents and judges of the cassation and appeal courts in the event they committed an offence damaging the honor and dignity of the judge, as well as in other cases provided by federal constitutional law which demonstrate the impossibility for the judge to continue to exercise its functions." [...]

<sup>4</sup> Article 102: 1. The jurisdiction of the Council of the Federation includes: [...] "(l) termination, at the request of the President of the Russian Federation, in accordance with federal constitutional law, of the powers of the President of the Constitutional Court of the Russian Federation, the Deputy President of the Constitutional Court of the Russian Federation and judges of the Constitutional Court of the Russian Federation, the President of the Supreme Court of the Russian Federation, deputies to the President of the Supreme Court of the Russian Federation and judges of the Supreme Court of the Russian Federation, presidents, deputy presidents and judges of the cassation and appeal courts in the event they committed an offence damaging for the honor and dignity of the judge, as well as in other cases provided by federal constitutional law which demonstrate the impossibility for the judge to continue to exercise its functions." [...]

<sup>5</sup> Presidential Address to the Federal Assembly, 15 January 2020: "(...) I truly believe that it is time to introduce certain changes to our country's main law, changes that will directly guarantee the priority of the Russian Constitution in our legal framework. What does it mean? It means literally the following: requirements of international law and treaties as well as decisions of international bodies can be valid on the Russian territory only to the point that they do not restrict the rights and freedoms of our people and citizens and do not contradict our Constitution (...) And my seventh and final point: the judicial system – the Constitutional and Supreme courts – plays a key role in ensuring legality and citizens' rights. I would like to emphasise, along with judges' professionalism, their credibility should be unconditional as well. Being fair and having a moral right to make decisions that affect people's lives have always been considered of paramount importance in Russia. The country's fundamental law should enshrine and protect the independence of judges, and their subordination only to the Constitution and federal law. At the same time, I consider it necessary to stipulate in the Constitution the Federation Council's authority to dismiss, on the proposal from the President, Constitutional and Supreme Court judges in the event of misconduct that defames a judge's honour and dignity, as well as in other cases provided for by federal constitutional law, that make it impossible for a person to maintain the status of a judge. This proposal is derived from the established practice. This is something Russia definitely needs today (...)"

<http://en.kremlin.ru/events/president/news/62582>

<sup>6</sup> <http://en.kremlin.ru/events/president/news/62589>

<sup>7</sup> Statement of the Chairman of the Federation Council Committee on International Affairs of the working group on drafting proposals for amendments to the Constitution during meeting held on 26 February 2020 with the President of the Russian Federation.

13. On 20 January 2020, the draft amendments were submitted to the State Duma (lower chamber) which adopted them in the first reading on 23 January 2020. The second reading took place on 10 March 2020 and on 11 March 2020 the State Duma adopted the draft amendments to the Constitution in the third and final reading. On the same day, these draft amendments were approved by the Federation Council.

14. On 14 March 2020, the President of the Russian Federation signed the “Law of the Russian Federation on introducing an amendment to the Constitution of the Russian Federation, on Improving the Regulation of Certain Aspects of the Organisation and Functioning of Public Authority” (hereinafter, “the Law on amendment to the Constitution”). The same day, he issued an inquiry to the Constitutional Court on the conformity with Chapter 1 (Fundamentals of the Constitutional System), Chapter 2 (Rights and Freedoms of Man and Citizen) and Chapter 9 (Constitutional Amendments and Review of the Constitution) of the Constitution of the provisions of the said Law, and on the conformity with the Constitution of the procedure for enacting Article 1 of the Law.

15. On 16 March 2020, the Constitutional Court ruled that the Law on amendment to the Constitution is in conformity with the Constitution (see CDL-REF (2020)022 and paragraphs 31 to 39 below).

16. On 17 March 2020, the President of the Russian Federation signed the Executive Order which initially set 22 April 2020 as the date for the nationwide voting on the draft amendments.<sup>8</sup> On 25 March 2020, the referendum was suspended due to the COVID-19 pandemic. The following question will be put to national vote:

“Do you approve the amendments to the Constitution of the Russian Federation?”

17. Pursuant to the proposal of the President, the amendments are considered to come into effect only after their approval by the citizens. The Central Election Commission is entrusted with the organization of the preparations for the nationwide voting (“all Russia-voting”). In principle, the results of the all-Russia vote will be determined no later than 5 days after it.<sup>9</sup>

## **B. National and international legal framework**

18. The background information concerning the relevant domestic legal framework, the specific international obligations arising out of the European Convention of Human Rights (hereinafter, “ECHR”) and a comparative analysis of the European Constitutional Courts’ powers regarding the execution of ECtHR’s judgments are detailed in the Venice Commission Final Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court.<sup>10</sup> This background information and the Commission’s general comments remain valid and will not be repeated here.

19. In essence, the proposed amendments to Articles 79 and 125 constitutionalise the amendments to the Federal Law on the Constitutional Court of the Russian Federation which entered into force in December 2015. The competence of the Constitutional Court to declare that an international judgment is non-executable has already been exercised since then. The question then arises as to whether its constitutional entrenchment pursues the essentially symbolic aim of

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<http://en.kremlin.ru/events/president/news/62589>

<sup>8</sup> <http://en.kremlin.ru/events/president/news/63003>

<sup>9</sup> The President of Russia instructed the Central Election Commission to organize the preparation of an all-Russia vote: <http://cikrf.ru/eng/news/cec/45649/>

At a meeting of the CEC of Russia, the Procedure for preparing and holding an all-Russian vote on the approval of amendments to the Constitution of the Russian Federation was presented:

<http://cikrf.ru/eng/news/cec/45755/>

<sup>10</sup> CDL-AD(2016)016 and CDL- AD(2016)005.

making a peremptory assertion of the supremacy of the constitution over international law or whether it also brings about substantive changes.

20. It should be noted at the outset that, by itself, the constitutionalisation of the Constitutional Court's power to declare international decisions non executable will produce an effect on its position in the hierarchy of norms. While federal constitutional law may be amended by a majority of three quarters of the total number of members of the Council of Federation and two-thirds of the total number of deputies of the State Duma (Art. 108 of the Constitution), a further amendment of the Constitution requires the procedure established for the adoption of federal constitutional law and shall come into force only after the amendments have been approved by the legislative authorities of not less than two thirds of the constituent entities of the Russian Federation (Art. 136 of the Constitution). As a consequence, it will be much more difficult, if not virtually impossible, to remove this competence of the Constitutional Court after it is enshrined in the Constitution.

### **C. Rulings of the Constitutional Court on the enforceability of the ECtHR's judgments**

#### **1. Judgment of the Constitutional Court of 19 April 2016 No. 12-П/2016**

21. The Venice Commission analysed in detail the Constitutional Court's ruling concerning the execution of the ECtHR's judgment in the case of *Anchugov and Gladkov v. Russia* (see CDL-AD(2016)005, paragraphs 13-27) in which the ECtHR held that the blanket ban on voting rights imposed automatically pursuant to Article 32 § 3 of the Constitution on all convicted offenders deprived of their liberty was contrary to Article 3 of Protocol no. 1. For the first time, the Constitutional Court ruled that an ECtHR's judgment was not enforceable in Russia.

22. On 25 September 2019, taking into account the legislative reform introducing community work, the Committee of Ministers decided to close the examination of the execution of the *Anchugov and Gladkov v. Russia* judgment considering that all the measures required by Article 46, paragraph 1 of the ECHR have been adopted (see Resolution CM/ResDH(2019)240).

#### **2. Judgment of the Constitutional Court of 19 January 2017 No. 1-И/2017**

23. In its judgment of 19 January 2017, the Constitutional Court examined the question of the possibility of executing a judgment of the ECtHR of 31 July 2014 in the case of *OAO Neftyanaya Kompaniya Yukos v. Russia*<sup>11</sup> delivered on the issue of just satisfaction, following the ECtHR's judgment on the merits of the case<sup>12</sup> (hereinafter, "the principal judgment"). The case concerned the tax and enforcement proceedings brought against the Russian oil company *OAO Neftyanaya Kompaniya Yukos* (hereinafter, "company Yukos") which led to its liquidation. In its principal judgment the ECtHR held that in the 2000 Tax Assessment proceedings the applicant company did not have sufficient time for the preparation of the case at first instance and on appeal, in breach of Article 6 of the Convention, that the assessment of the penalties relating to 2000 and the doubling of the penalties for 2001 were unlawful and in breach of Article 1 of Protocol No. 1, and that in the enforcement proceedings against the applicant company the domestic authorities failed to strike a fair balance between the legitimate aim of these proceedings and the measures employed, in breach of the same Convention provision. In its judgment on just satisfaction, the ECtHR held that the Russian Federation is to pay EUR 1,866,104,634 to the applicant company's shareholders and their legal successors and heirs, as the case might be, in proportion to their nominal participation in the company's stock.

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<sup>11</sup> *OAO Neftyanaya Kompaniya Yukos v. Russia*, judgment (just satisfaction), no. 14902/04, 31 July 2014.

<sup>12</sup> *OAO Neftyanaya Kompaniya Yukos v. Russia*, judgment (merits), no. 14902/04, 20 September 2011.

24. The petition to the Constitutional Court was brought by the Ministry of Justice, on the ground of “the discovered uncertainty in the question of the possibility to execute” the above-mentioned judgment.

25. First, the Constitutional Court acknowledged that the ECHR is a “living instrument” “called upon to take into account the changes in the field of human rights protection”. However, it also reiterated – as previously stated in its ruling concerning the execution of the *Anchugov and Gladkov* judgment – that the Russian Constitutional order is not subordinate to the European Convention system. It asserted once again that “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 for the Protection of Human Rights and Fundamental Freedoms in the Russian constitutional legal order and in many respects depends on the respect of the European Court of Human Rights for the national constitutional identity”.

26. Then, the Constitutional Court proceeded to an interpretation of the Vienna Convention on the law of treaties to justify its position. Relying on Articles 26 (*pacta sunt servanda*), 31 § 1 (general rule of treaty interpretation) and 46 § 1 (provisions of internal law regarding competence to conclude treaties) of the Vienna Convention, the Constitutional Court expressed the view that a judgment of the ECtHR cannot be regarded as binding for execution by the Russian Federation “if a specific provision of the Convention (...) 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 rights and freedoms and to the basis of the constitutional system of Russia.” Thus, the Constitutional Court reiterated the general principle that now guides its reading of the ECtHR’s judgments as previously held in its ruling concerning the execution of *Anchugov and Gladkov* judgment.

27. As regards specifically the issue at stake in the Yukos case, the Constitutional Court underlined that the Constitution 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 of the Constitution). It then recalled that in its judgment of 14 July 2005 No. 9-П, it has recognised the provisions of Article 113 of the Tax Code of the Russian Federation about the three-year limitation period for bringing to liability for commitment of a tax offence as not contradicting the Constitution. When adopting such decision, the Constitutional Court leaned on the following legal positions: principles of legal equality and justice and the principle of commensurability (proportionality, proportional equality) following from them, expressed in Article 17 (Section 3), Article 19 (Sections 1 and 2) and Article 55 (Section 3) of the Constitution. It also underlined that the constitutional-law meaning of Article 113 of the Tax Code is based on the interpretation of Article 57 of the Constitution.

28. Referring to the ECtHR’s judgment on just satisfaction, the Constitutional Court stressed that the pecuniary losses of the Yukos company resulted of the illegal actions of the company itself, and that the State was competent to apply measures of liability, including administrative ones, in order to compensate pecuniary damage caused to it. It also stated that the company showed itself “as a malicious non-payer of taxes and ceased to exist leaving a serious unliquidated debt”. The Constitutional Court then considered the company’s activity, its place in the country’s economy, and “the law ruining effect it had, hindering stabilization of constitutional law regime and public legal order”. It further noted that the ECtHR in its principal judgment did not deny the presence of a large-scale scheme of evasion of taxpaying in the company’s activity.

29. Finally, the Constitutional Court considered that the payment of the amount awarded by the ECtHR, 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)



and concluded that it is impossible to execute in accordance with the Constitution (Article 57 in conjunction with Articles 15 (Sections 1, 2 and 4), 17 (Section 3), 19 (Sections 1 and 2), 55 (Sections 2 and 3) and 79, the ECtHR's judgment on just satisfaction. Yet, the Constitutional Court did not exclude the possibility of manifestation of good will by Russia in "determining the bounds of a compromise and mechanisms of its attainment in respect of shareholders" of the Yukos company. It acknowledged the competence of the Government to initiate the consideration of the question of payment with the limit that such payment in any event must not affect budget receipts and expenditures, as well as the property of the Russian Federation.

30. The examination by the Committee of Ministers of the execution of this judgment is pending.<sup>13</sup>

### **3. Opinion of the Constitutional Court of 16 March 2020<sup>14</sup>**

31. At the request of the President of the Russian Federation, the Constitutional Court was called to rule on the merits of the amendments contained in Article 1 of the Amending Law in respect of whether they conform to chapters 1, 2 and 9 of the Russian Federation Constitution, including on whether it would be acceptable, based on the outcome of the direct nationwide vote by citizens, to supplement Article 81 of the Constitution of the Russian Federation with a paragraph 31, and also to rule on whether additional conditions for the entry into force of the Amending Law, other than obtaining the approval of legislative authorities of at least two thirds of the constituent entities of the Russian Federation, may be established by the Amending Law itself, and whether the amendments to the Constitution of the Russian Federation may enter into force on condition of being approved in a nationwide vote, as provided for in Article 3 of the Amending Law.

32. On 16 March 2020, the Constitutional Court issued its Opinion (CDL-REF(2020)022).

33. First, the Constitutional Court recalled that under Article 136 of the Constitution, amendments to the provisions of Chapters 3-8 of the Constitution shall be adopted in accordance with the procedure established for the adoption of federal constitutional law and shall come into force after they have been approved by the legislative authorities of not less than two thirds of the constituent entities of the Russian Federation. It then clarified that Article 136 of the Constitution does not directly indicate the participation of the Constitutional Court in the procedure for amending the Constitution. At the same time, it considered that judicial constitutional control of such amendments, within the meaning of Articles 10, 15, 16, 125 and 136 of the Constitution, may serve as "an appropriate guarantee of the legal force of the provisions on the foundations of the constitutional order of Russia and on fundamental human and citizen's rights and freedoms in the system of constitutional norms, a guarantee of consistency of the text of the Constitution".

34. Secondly, the Constitutional Court noted that Article 1 of the draft amendments to the Constitution provides the entry into force of these amendments on the day of the official publication of the results of the "all-Russian vote", if the amendments to the Constitution are approved. In this regard, the Constitutional Court clarified that it does not assess the consistency

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<sup>13</sup> At its 1340th meeting (March 2019) (DH), the Committee welcomed the payment of the costs and expenses on 11 December 2017 and urged the authorities to rapidly proceed with the payment of interest for the delay. It also expressed grave concern at the continued non-implementation of the remaining parts of the just satisfaction judgment and encouraged the Russian authorities and the Secretariat to reinforce their cooperation with a view to finding solutions in this respect. Further, it invited the authorities to submit, for 1 December 2019, information on the above issues in the form of an action plan with an indicative timetable as regards the steps envisaged for the full execution of the just satisfaction judgment. No information has been submitted by the authorities in time for this meeting; [https://hudoc.exec.coe.int/eng#{"fulltext":\["yukos"\],"EXECDocumentTypeCollection":\["CEC"\],"EXECIdentifier":\["004-14112"\]}](https://hudoc.exec.coe.int/eng#{)

<sup>14</sup> The summary of the Constitutional Court's opinion presented above is not intended to cover exhaustively the motivation of the Constitutional Court but is limited to the arguments related to the proposed draft amendments which the Venice Commission has been called to analyse.

of such a requirement with the provisions of the Federal Law of 4 March 1998 No. 33-FZ "On the Procedure for Adoption and Entry into Force of Amendments to the Constitution of the Russian Federation". Yet, it underlined that the provisions of the Law on the amendment to the Constitution that already entered into force – in relation to the regulation of the procedure for subsequent entry into force of other provisions of the Law – have priority over the said Federal Law as contained in a special and newer legal act having a greater legal force on account of the involvement of the legislative authorities of the Russian Federation's constituent entities in its adoption. Then, referring to its Ruling of 17 July 2014 No. 1567-O, the Constitutional Court recalled that a special mechanism for introducing amendments to the Constitution by means of a special amendment law allows – within its permissible limits – to fine-tune individual provisions of its Chapters 3-8 without altering the Constitution as a whole.

35. Third, the Constitutional Court observed that the amending law had reaffirmed the procedure for introducing a constitutional amendment in accordance with Article 136 of the Constitution, in conjunction with its Article 108 but provided, in addition to the Opinion of Constitutional Court, for an all-Russian vote as a compulsory condition for the entry into force of the proposed amendments. In the Court's view, supplementing the designated procedure in this way by holding a nationwide vote cannot be considered as denying the Federal Assembly and the legislators of the Russian Federation's constituent entities the prerogative that belongs to them and the corresponding constitutional obligation driven by it and, within the meaning of Articles 3, 108 and 136 of the Russian Federation Constitution, fulfils the principle of grassroots democracy, which is one of the most important fundaments of the constitutional structure, and is constitutionally justified. The lack of provision for a turnout was a legitimate choice of the constituent legislator who deemed that the voluntary refusal of any portion of citizens to participate in the vote cannot prevent the constitutionally significant determination of the resulting - both positive and negative – expression of will of the participants in such a ballot.

36. Fourth, the Constitutional Court assessed Article 1 of the Law on amendment to the Constitution which provides an addition to Article 79 of the Constitution with the provision that "the decisions of interstate bodies adopted on the basis of the provisions of international treaties of the Russian Federation in an interpretation which contradicts the Constitution of the Russian Federation, shall not be executed in the Russian Federation". The Constitutional Court underlined the connection of this amendment with the proposed amendment to Article 125 of the Constitution, according to which the Constitutional Court shall rule on the possibility of executing decisions of interstate bodies taken on the basis of the provisions of the Russian Federation's international treaties in an interpretation that is contrary to the Russian Federation Constitution, and also on the possibility of executing decisions of an international/interstate court or a foreign or international court of arbitration/mediation placing the Russian Federation under obligations, where such a decision is contrary to the tenets of public order in the Russian Federation. The Constitutional Court found that "these provisions, as follows directly from their wording, do not prescribe a repudiation by the Russian Federation of compliance with the international treaties themselves and of the honouring of its international obligations and, accordingly, are not contrary to Article 15 (paragraph 4) of the Russian Federation Constitution. The given mechanism is not intended to establish a repudiation of execution of international treaties and the decisions of interstate court bodies based thereon but rather to devise a constitutionally acceptable means of executing such decisions by the Russian Federation while steadfastly safeguarding the supreme legal authority of the Russian Federation Constitution within the Russian legal system, a component part of which is constituted by the unilateral and multilateral international treaties of Russia, including those providing for the corresponding powers of interstate courts."

37. Fifth, the Constitutional Court considered that the authorisation given to the Council of Federation to dismiss, on the proposal of the President of the Russian Federation, amongst others the Chairman of the Constitutional Court, Deputy Chairman of the Constitutional Court and judges of the Constitutional Court "in the event of conduct by them that discredits the honour and dignity of a judge, as well as in other cases provided for in federal constitutional law that are

indicative of judges' inability to discharge their duties" may not be considered incompatible with Article 10 of the Constitution, which guarantees the independence of legislative, executive and judicial bodies, and with the constitutional nature of judicial power in a democratic state of law. Noting that the Constitution of the Russian Federation does not establish a specific procedure for terminating the office of a judge, merely stating that the powers of a judge may be terminated or suspended only according to the rules and on the grounds laid down by federal law, the Court took into account that "the corresponding procedure involves the President of the Russian Federation and the legislature acting via the Federation Council and in any case does not permit the unreasoned and unsubstantiated termination of a judge's powers, on the understanding that federal constitutional law establishes the grounds and procedure for such a termination."

38. Finally, the Constitutional Court, after considering acceptable the increase in competence of the Constitutional Court following the institution of preliminary constitutional supervision, at the request of the Russian Federation President, with regard to draft Russian Federation laws amending the Russian Federation Constitution, draft federal constitutional laws and draft federal laws, analysed the proposed amendment to Article 125 (part 1) of the Constitution which reduces the number of judges of the Constitutional Court from 19 to 11, including the Chairman of the Constitutional Court of the Russian Federation and his deputy. It took note of the transitional regulation allowing judges of the Constitutional Court to continue to exercise their functions after the entry into force of Article 1 of the Law on amendment to the Constitution until they cease to exercise them on the grounds established by the Federal Constitutional Law of 21 July 1994 No. 1-FKZ. It considered that such a transitional regulation permitting the temporary presence in the composition of the Constitutional Court of more judges than is provided for by the Constitution shall be consistent with the principles of the independence and irrevocability of judges and does not contain any contradiction with Article 15 (part 1) of the Constitution, as it is an acceptable way of achieving a balance of constitutional values with regard to the solution of this issue.

39. The Constitutional Court concluded that: the procedure for the entry into force of article 1 of the Law on amendment to the Constitution is in conformity with the Constitution, and that the provisions of the Law on amendment to the Constitution that have not yet entered into force are in conformity with the provisions of Chapters 1, 2 and 9 of the Constitution.

#### **D. Justification by the Russian authorities of the proposed draft amendments**

40. In the exchanges which the rapporteurs of the Venice Commission had with the Russian authorities and representatives of the academic community in Moscow, the authorities disputed that the amendments express the rejection by the Russian Federation of its international obligations; they underlined that the proposed draft amendments do not relate to Chapter 1 (Fundamentals of the constitutional system), Chapter 2 (Rights and Freedoms of Man and Citizen) and Chapter 9 (Constitutional amendments and Review of the Constitution) of the Constitution and that the Russian Federation has adopted a position of principle: it will fulfil all its international commitments. In this regard, they also stressed that Article 15 (4) of the Constitution according to which principles and norms of international law as well as international agreements are an integral part of the Russian Federation legal system, remains unchanged. The amendments will not affect Article 15; they will not prejudice the possible ratification of new international treaties and will not restrict the right of citizens of the Russian Federation to apply to international bodies. It was nonetheless stressed in this context that pursuant to current Article 79 of the Constitution, the commitments which follow the ratification by the Russian Federation of international treaties may not "limit the rights and freedoms of the individual and the citizen or contradict the fundamentals of the constitutional system of the Russian Federation".

41. It was stated that legal certainty is the driving force behind these amendments: by entrusting the Russian Constitutional Court with the power to "resolve matters concerning the possibility of enforcing decisions of interstate bodies [...], where construed in a manner

contrary to the Constitution of the Russian Federation”, the proponents of the constitutional amendment are seeking to put an end to the current state of affairs, that is, to a fluid situation whereby the enforcement of decisions of international organizations to which Russia participates (such as the judgments of the ECtHR) often poses allegedly “serious” problems. On the contrary, under the proposed provision, all interested parties will know once and for all, in time and for all purposes whether such decision will be enforced in Russia and in what terms.

42. The authorities reiterated several arguments raised at the time of the introduction of the legislative amendments in 2015. Putting emphasis on national sovereignty, they stressed that in several other countries, notably in Germany and in Italy, there exists constitutional case-law to the extent that the primacy of the constitution over international treaties may lead to the non-execution of international judgments.

43. They argued that the ECtHR has interpreted the ECHR beyond its originally intended meaning to an extent that exceeds the original consent of States. They referred to the case of *Anchugov and Gladkov v. Russia*<sup>15</sup> to illustrate this point. They argued that at the time of Russia’s ratification of the ECHR, Article 32 of the Constitution already contained the contested ban on prisoners’ right to vote and that no question was raised about the possible incompatibility of this provision with the ECHR. Hence, the incompatibility was the result of the Strasbourg Court’s interpretation of the ECHR’s provision to which the Russian Federation did not consent at the time of its accession to the Convention. “European Values” should be redefined from the beginning, with the participation on equal grounds of Russia. Until such an agreement is reached, Russia reserves its right to openly contest decisions (including Court judgments) that are rendered unilaterally. The Russian participants in the meeting insisted that it is not about refusing to execute decisions of international courts, in particular the European Court of Human Rights, as such, but only in case of interpretation of international treaties and conventions which contradicts the Russian Constitution.

44. The Commission’s interlocutors (authorities and representatives of the scientific community) also underlined that the right of the ECtHR to interpret the ECHR is not contested *per se*. What is questioned is the ECtHR’s method of interpretation of the ECHR and the way it uses the “European consensus” concept. They argue that there are more and more voices contesting the ECtHR’s extensive use of powers deriving from Article 32 of the Convention<sup>16</sup> (Jurisdiction of the Court), as illustrated by the backlash it faced following the *Hirst v. United Kingdom*<sup>17</sup> judgment, in which it held that the absolute ban on prisoners voting right in the United Kingdom was in violation of Article 3 of Protocol no. 1. They further argued that, as emphasised by several judges who dissent to this judgment,<sup>18</sup> there is no European consensus with respect to restrictions of prisoners’ voting rights. In addition, they consider that the European consensus concept should not be used to impose new legal standards without considering the sociocultural context of a country.

45. The Commission’s interlocutors also mentioned the growing distrust in Russia vis-à-vis the ECtHR and its judges – some of them elected by the Parliamentary Assembly in the absence of the Russian parliamentarians. The judicial activism of some ECtHR judges and their former professional links with NGOs were also mentioned.

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<sup>15</sup> *Anchugov and Gladkov v. Russia*, nos. 11157/04 and 15162/05, Judgment 4 July 2013.

<sup>16</sup> Article 32 ECHR: “1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47. 2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.”

<sup>17</sup> *Hirst v. United Kingdom (no. 2)* judgment, no. 74025/01, 6 October 2005

<sup>18</sup> See Joint dissenting opinion of judges Wildhaber, Costa, Lorenzen, Kovler and Jebens to the conclusion of the majority in *Hirst v. United Kingdom (no. 2)*, paragraph 6.

46. Against this background, the proposed amendment to Article 79 should, according to these interlocutors, be seen as a compromise: as nothing prevents the ECtHR from creating in the future new legal standards that could be in contradiction with the Constitution of the Russian Federation, there needs to be a possibility for the Constitutional Court to classify the ECtHR's judgments.

#### IV. Analysis of the proposed draft amendments

47. Current Article 79 of the Constitution provides that:

*"[t]he Russian Federation in conformity with the relevant treaties may participate in international associations and delegate to them part of their powers, if it does not limit the rights and freedoms of the individual and the citizen or contradict the fundamentals of the constitutional system of the Russian Federation"* (see Chapter one and two of the Constitution with Articles 16, 64 and 135 paragraph 1).

The proposed draft amendment to Article 79 of the Constitution adds that:

*"Decisions of interstate bodies adopted on the basis of provisions of international treaties of the Russian Federation, where construed in a manner contrary to the Constitution of the Russian Federation, shall not be subject to enforcement in the Russian Federation"*.

Directly correlated to this amendment, the proposed draft amendment to Article 125 § 5 b) provides that the Constitutional Court of the Russian Federation

*"shall, in accordance with the procedure stipulated by the federal constitutional law, resolve matters concerning the possibility of enforcing decisions of interstate bodies adopted on the basis of provisions of international treaties of the Russian Federation, where construed in a manner contrary to the Constitution of the Russian Federation."*

48. At the outset, the Commission notes that the proposed additions to Articles 79 and 125 § 5b) refer to *"decisions of interstate bodies adopted on the basis of provisions of international treaties of the Russian Federation"* (emphasis added), whereas the 2015 amendments to the Federal Law on the Constitutional Court refer to decisions of *"interstate human rights protection institutions."* (emphasis added). Indeed, draft Article 125 § 5 b) contains a further clause, empowering the Constitutional Court to resolve matters *"concerning the possibility of enforcing a decision of a foreign or an international (interstate) court, foreign or international arbitration tribunal or authority, which imposes on the Russian Federation obligations, if this decision is contrary to the fundamentals of the public legal order of the Russian Federation."* The Venice Commission will not comment further on this matter, as the request for this opinion relates to the context of execution of judgments of the European Court of Human Rights only.

49. Furthermore, the Commission observes that the sentence added to Article 79 forbids the execution of decisions which are *"contrary to the Constitution"*. This formula is broader than that of current Article 79 (*"limit[ing] the rights and freedoms of the individual and the citizen or contradict[ing] the fundamentals of the constitutional system of the Russian Federation"*). The addition will therefore increase the possibility for the Constitutional Court to declare decisions of interstate bodies non executable, beyond human rights and basic principles of the Constitution.

50. The Venice Commission has already had the occasion to stress<sup>19</sup> that the domestic solutions in respect of the relation between the international and the domestic legal order are very diverse, and that there is a wide variety of choices as to the status of the ECHR in domestic law in relation to constitutional provisions. The choice of the relation between the national and the international systems is a sovereign one for each State to make. Similarly, the model of the division of power between the branches of the state (government, legislature and judiciary) is a matter for

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<sup>19</sup> CDL-AD(2016)016, §§ 81 ff. and 111.

constitutional law (except where the state has undertaken specific international law obligations affecting this division, e.g. a duty to provide for judicial review in certain situations). Whatever model is chosen, however, the State is bound by international law under Article 26 of the Vienna Convention on the Law on Treaties (“*Pacta sunt servanda*”), which stipulates that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.” Article 27 of the Vienna Convention (“Internal law and observance of treaties”) further stipulates that “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty ...”. No legal argument at national law, including constitutional law, can justify an act or omission which turns out to be in breach of obligations stemming from international treaties which it has chosen to ratify. The execution of international obligations stemming from a treaty in force for a certain State is incumbent upon the State as a whole, i.e. all State bodies, including the Constitutional Court.

51. The Commission has also previously recalled that the enforcement of the ECtHR’s judgments is a critical component of the European Convention system. The right to individual petition would be illusory if a final, binding judgment of the ECtHR remained unenforced. The mechanism set up by the Convention for supervising the execution of judgments, under the Committee of Ministers’ responsibility (Article 46 § 2 of the Convention), demonstrates the importance of effective implementation of judgments. The ECtHR’s authority and the system’s credibility both depend to a large extent on the effectiveness of this mechanism of execution of judgments. As also underlined by the Committee of Ministers, “speedy and efficient execution of judgments is essential for the credibility and efficacy of the [Convention] as a constitutional instrument of European public order on which the democratic stability of the continent depend”.<sup>20</sup>

52. In the *Verein gegen Tierfabriken Schweiz (VgT) (no. 2) v. Switzerland* judgment, the Grand Chamber of the ECtHR summed up the principles which should guide States Parties in their execution of the Court’s final judgments, finding in particular as follows:

“As regards the requirements of Article 46, it should first be noted that a respondent State found to have breached the Convention or its Protocols is under an obligation to abide by the Court’s decisions in any case to which it is a party. In other words, a total or partial failure to execute a judgment of the Court can engage the State Party’s international responsibility. The State Party in question will be under an obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to take individual and/or, if appropriate, general measures in its domestic legal order to put an end to the violation found by the Court and to redress the effects, the aim being to put the applicant, as far as possible, in the position he would have been in had the requirements of the Convention not been disregarded;

(...)

Admittedly, subject to monitoring by the Committee of Ministers, the respondent State in principle remains free to choose the means by which it will discharge its obligations under Article 46 § 1 of the Convention, provided that such means are compatible with the conclusions set out in the Court’s judgment (...). However, in certain special circumstances the Court has found it useful to indicate to a respondent State the type of measures that might be taken to put an end to the situation – often a systemic one – which has given rise to the finding of a violation (...). Sometimes, the nature of the violation does not even leave any choice as to the measures to be taken (...)<sup>21</sup>

53. Like all State Parties to the ECHR, the Russian Federation is thus under the obligation to extend to all persons under its jurisdiction the rights contained in the Convention and to abide by the decisions of the ECtHR in this regard. In recent years, the high-level conferences on reform

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<sup>20</sup> Reply to Parliamentary Assembly Recommendation 1576 (2002), adopted by the Committee of Ministers on 26 March 2003 at the 833rd meeting of the Ministers’ Deputies (CM/AS(2013)Rec1576 final). See also Steering Committee for Human Rights (CDDH), Report on the longer-term future of the system of the ECHR, <https://rm.coe.int/the-longer-term-future-of-the-system-of-the-european-convention-on-hum/1680695ad4>

<sup>21</sup> ECtHR, *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland* (no. 2) [GC], Application no. 32772/02, 20 June 2009, §§ 85, 88.

of the Convention system - at Interlaken (February 2010), Izmir (April 2011), Brighton (April 2012), Brussels (2015) and Copenhagen (2019) – have all recognised the fundamental importance of execution of judgments for the effectiveness of the Convention system. The execution of judgments is a key obligation of State Parties and failures to execute judgments of the ECtHR “must be confronted in an open and determined manner”.<sup>22</sup>

54. When States Parties to the ECHR do not agree with the Strasbourg Court’s interpretation of the Convention, they have at their disposal different options to express their views and be heard: first and foremost, to appeal before the Grand Chamber to seek for a change of the ECtHR’s case-law. It is worth noting that “the judgment of an international court implies a delicate balance between international jurisdiction and national sovereignty. Its enforcement therefore calls for a different type of procedure from that applicable to national proceedings, involving, among other things, dialogue and cooperation. This can also be expressed in terms of a shared responsibility between the different actors, including, for the Convention system, the Court, the Committee of Ministers, the Governments and the national courts.”<sup>23</sup> In this context, an important aspect of an effective implementation process is the role played by national courts and the necessary dialogue between the ECtHR and its national counterparts<sup>24</sup>. A national court has the possibility to argue on Convention grounds for a different solution from that initially adopted by the ECtHR (see *Al-Khawaja v. United Kingdom*<sup>25</sup> presented by the then President of the ECtHR as “a good example of judicial dialogue between the national courts and the European Court”,<sup>26</sup> and examples of different methods of implementation in CDL-AD (2016)016, Appendix §§ 108-116). The court can also try to interpret the provisions of the Constitution in a manner that is open to international law; the text of the Convention and the case-law of the European Court of Human Rights may serve as guidelines for the interpretation of the content and scope of fundamental rights and rule of law principles of the Constitution. A higher national court of those States which have ratified Protocol 16<sup>27</sup> may also request an advisory opinion.

55. But at any rate the obligation remains to abide by the judgments of the ECtHR, whose jurisdiction, under Article 32 ECHR, covers “all matters concerning the interpretation and application of the Convention and the Protocols thereto”. As already underlined by the Commission, “upon becoming a party to the Convention, the State Parties expressly accepted the competence of the ECtHR to interpret, and not only apply, the Convention (see CDL-AD(2016)005, § 45).

56. The Venice Commission acknowledges that the primacy of the Constitution, which is totally legitimate, may represent a complex problem to overcome in order to achieve execution of an international judgment. Several States have been confronted with the need to initiate a process of constitutional reform and have found appropriate solutions.<sup>28</sup>

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<sup>22</sup> Declaration of Copenhagen adopted at the High-level Conference meeting in Copenhagen on 12 and 13 April 2018, § 20.

<sup>23</sup> Seminar background paper: Implementation of the judgments of the European Court of Human Rights: a shared judicial responsibility? Prepared by the Organising Committee, chaired by Judge Laffranque and composed of Judges Raimondi, Bianku, Nußberger and Sicilianos, assisted by R. Liddell of the Registry. This paper does not reflect the views of the Court.

<sup>24</sup> Solemn hearing of the European Court of Human Rights on the occasion of the opening of the judicial year Friday 27 January 2012, Address by Sir Nicolas Bratza President of the European Court of Human Rights

<sup>25</sup> *Al-Khawaja v. United Kingdom*, nos. 26766/05 and 22228/06, 15 December 2011.

<sup>26</sup> Solemn hearing of the European Court of Human Rights on the occasion of the opening of the judicial year Friday 27 January 2012,

<sup>27</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/214>

<sup>28</sup> In some countries, for example, constitutional amendments were carried out as a general measure of execution; this was the case notably in Greece, Hungary, Italy, Slovak Republic and Turkey, (see at <http://www.coe.int/en/web/execution/home>). See CDL-AD(2016)016, § 24.

57. The role of national constitutional courts in this context is extremely important. In countries where the constitution has supremacy over international law, there exists the – remote – possibility that a constitutional court may find that the interpretation of an ECHR provision given by the European Court of Human Rights collides with the domestic constitution.<sup>29</sup> But this finding would not remove the obligation by that country to abide by a judgment rendered against it; in extreme cases, even the possibility of amending the Constitution could be envisaged. In the Russian Federation the – certainly uncommon – competence of the Constitutional Court to examine the compatibility of a given modality of execution proposed by the Government Agent (or other State organ) would not be problematic per se, should the matter remain on the agenda of the State institutions (the government, the parliament) which are responsible under international law for the enforcement of the judgment. The role of the Constitutional Court should be – as the Court itself has described it (see para 36 above) – “to devise a constitutionally acceptable means of executing such decisions by the Russian Federation while steadfastly safeguarding the supreme legal authority of the Russian Federation Constitution within the Russian legal system”. A case in which an international judgment may not be executed because its execution would collide with the Constitution cannot be but truly exceptional. Instead, the Russian Constitutional Court is empowered to declare that the judgment is non-executable as *such* in all cases where an issue of compatibility with the Constitution arises.

58. It is true that the Constitutional Court of the Russian Federation has demonstrated a certain openness to dialogue with the European Court of Human Rights. In its judgment in the case of *Anchugov and Gladkov*, the Court affirmed that the Strasbourg judgment could not be executed but at the same time indicated to the federal legislator a way out of the impasse. On the basis of these indications, the legislation was amended, and the Committee of Ministers considered that the judgment had been fully executed. The case of *Anchugov and Gladkov* indeed demonstrates that constitutional hurdles may be addressed, which is what has happened, over time, in other Council of Europe member States. It should be noted in this context that the wording of the amended Article 125 §5 b) is less affirmative than that of Article 79, suggesting the possibility that the Constitutional Court will find a solution (“resolve matters”). The Russian authorities have stressed in this respect that the Constitutional Court of the Russian Federation is a respected

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<sup>29</sup> For example, as the Russian interlocutors have underlined, the Italian Constitutional Court has affirmed (judgments 348 and 349 of 2007) that when a national court raises before it a question of compatibility of a domestic provision with the ECHR case-law, the Constitutional Court has the duty to examine whether the provision of the ECHR as interpreted by the Strasbourg Court is compatible with the Constitution. This means that there is, theoretically, a possibility that the Court may reach the conclusion that it is not. But even in that case Italy remains bound to its obligation to find an appropriate manner to execute the judgment. In judgment 49 of 2015, the Constitutional Court stated that the duty to bring the national legal order in conformity with the standards fixed by the Strasbourg Court by declaring unconstitutional national legislation which conflicts with such standards only arises if these standards are considered as “established” or derive from so-called pilot judgments. However, this rule only applies as concerns standards developed by the Strasbourg Court in judgments rendered against other countries: it does not affect the uncontested obligation under Article 46 ECHR to abide by judgments rendered in respect of Italy. The Russian interlocutors also stressed, that the case-law of the German Federal Constitutional Court may lead to the non-execution of international judgments. As far as the ECHR is concerned, the GFCC has stated, that the possibilities of the interpretation of the Constitution in a manner open to the Convention (see § 54 above) end where it no longer appears justifiable according to the recognised methods of interpretation of statutes and of the constitution (GFCC, Decision from 4 May 2011, 2 BvR 2365/09, par. 93, [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2011/05/rs20110504\\_2bv\\_r236509en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2011/05/rs20110504_2bv_r236509en.html); Decision from 12 June 2018, 2 BvR 1738/12, par. 133, [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2018/06/rs20180612\\_2bv\\_r173812en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2018/06/rs20180612_2bv_r173812en.html)). But until now there has been no decision of the ECtHR which could not be implemented by Germany via its state institutions, although there have been cases in which the GFCC’s interpretation of fundamental rights was not completely identical to the interpretation of the ECtHR (see examples in CDL-AD(2016)016 Appendix §§ 112 - 116).



institution which has most often ruled in favour of the applicants, granting extensive protection to the fundamental rights of the citizens of the Russian Federation. The rapporteurs' interlocutors from civil society have indeed confirmed the view that the Constitutional Court of the Russian Federation had provided relief to many human rights issues in the country. The Venice Commission has also had the occasion in the past to welcome the findings of the Constitutional Court of the Russian Federation.

59. But to what extent this statement in Article 79 of the Russian Constitution will have adverse effects on the Russian international obligations under the ECHR depends of course on its actual concrete implementation. In this respect, the Venice Commission notes with great concern that the Constitutional Court of the Russian Federation has reached the conclusion that a judgment concerning exclusively the question of payment of sums of money as just satisfaction was non executable. The Commission reiterates its position that, if it is admissible that the question of the compatibility with the Constitution of an execution measure of general character be brought before the Constitutional Court, the same cannot be said for individual measures such as orders to pay just satisfaction, even if they may admittedly touch upon important interests of the State.

60. Furthermore, the Commission cannot but notice in this connection that, while at the moment the judges of the Constitutional Court may only be removed at the request of two thirds of the judges of the Constitutional Court, under the new constitutional amendments it will be the Executive, i.e. the President who will have the power to initiate a procedure for their dismissal by the Council of the Federation (see para. 11 above). The right to initiate a removal process vested in the executive arm of government is not necessarily problematic in itself, provided that the process of removal is a judicial one. The introduction of such power in this context, notably on account of the lack of regulation of the removal process in the Constitution, appears to increase the possibility of influence of the Executive over the Constitutional Court.

61. The Venice Commission notes that the changes under consideration are considered to pursue legal certainty, and that the authorities stress that the possibility for citizens of the Russian Federation to apply to the European Court of Human Rights will not be restricted by the amendments. The Commission however finds that the possibility given to the Executive to apply to the Constitutional Court in order for it to rule on the existence or not of a "contradiction" of an ECtHR's judgment with the Constitution can only create legal uncertainty for individual applicants, depriving them of the final and enforceable character of an ECtHR judgment (including as regards an individual measure consisting of an order of payment of just satisfaction).

## **V. Conclusion**

62. The Russian Federation has made the political decision to join the Council of Europe and remain a member of the organisation. In ratifying the ECHR and accepting the jurisdiction of the Strasbourg Court, it has committed itself to executing the judgments of the Court. Indeed, there is no choice to execute or not to execute the Strasbourg Court judgment: under Article 46 of the Convention the judgments of the ECtHR are binding. In countries where the constitution has supremacy over the European Convention on Human Rights, there exists a possibility that the Constitutional Court might find a contradiction between the Constitution and the interpretation by the European Court of Human Rights of a given provision of the European Convention on Human Rights. But this finding would not put an end to the question of execution.

63. A dialogue between the European Court of Human Rights and the apex domestic courts is an appropriate forum for finding a solution before the matter becomes one for execution via the Committee of Ministers.

64. The Venice Commission has previously found that the power of the Constitutional Court of the Russian Federation to declare a judgment non executable as such, thus putting an end to the process of execution, contradicts the obligations of the Russian Federation under the European

Convention on Human Rights. The Commission is alarmed by the constitutional entrenchment of such a power.

65. In addition, the Commission is concerned that the proposed amendments enlarge the possibilities for the Russian Constitutional Court to declare that decisions of interstate bodies adopted on the basis of provisions of international treaties of the Russian Federation which collide with the Constitution may not be executed in the Russian Federation. Indeed, the proposed amendments use the notion “contrary to the Constitution”, which is too broad a formula, broader than that of current Article 79 (“limit[ing] the rights and freedoms of the individual and the citizen or contradict[ing] the fundamentals of the constitutional system of the Russian Federation”).

66. These concerns should be seen against the backdrop of the proposed amendment to Article 83 of the Constitution, empowering the Council of the Federation to dismiss the judges of the Constitutional Court at the request of the President. This makes the Court vulnerable to political pressure.

67. Whether – and to what extent – the proposed amendments will have adverse effects on honouring Russia's commitments under the ECHR depends on the manner in which the amendments will be applied. In that respect, the Commission reiterates that the power of the Constitutional Court to rule on the constitutionality of an ECtHR judgment should not extend to individual measures such as orders to pay just satisfaction.

68. Therefore, and in the light of its previous conclusions,<sup>30</sup> the Venice Commission considers that the proposed addition to Article 79 of the Constitution should be removed, or its wording should be amended to make it similar to the wording of Article 125 § 5 b), which underlines the aim to find a solution to possible contradictions. It also reiterates its previous conclusions as regards the limits to the power of the Constitutional Court to review the constitutionality of measures of execution of judgments of the European Court of Human Rights.

69. Finally, as concerns the compatibility of the proposed draft amendments with Article 15 (4) of the Constitution of the Russian Federation, it is not for the Venice Commission to assess it; it is up to the Constitutional Court, within its legal competences; the latter has actually examined it in its opinion of 20 March 2020, reaching the conclusion that the draft amendments are compatible with Article 15 of the Constitution.

70. The Venice Commission remains at the disposal of the Russian authorities and the Parliamentary Assembly for further assistance in this matter.

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<sup>30</sup> CDL-AD(2016)016, §§ 38-46.