

# Client Update

## Ruling of the Constitutional Court of the Russian Federation on Enforcement of ECHR Judgments

### NEW YORK

Alyona N. Kucher  
ankucher@debevoise.com

Andrey A. Gorlenko  
aagorlenko@debevoise.com

Dmitry S. Stakheev  
dsstakheev@debevoise.com

On July 14, 2015, the Constitutional Court of the Russian Federation (hereinafter the “**Constitutional Court**”) issued Ruling No. 21-P (hereinafter the “**Ruling**”) on enforcement of the judgments of the European Court of Human Rights (hereinafter the “**ECHR**”).

The relevant case on the constitutionality of certain provisions of Russian law was initiated after a group of deputies of the State Duma of the Russian Federation applied to the Constitutional Court in accordance with the procedure for compliance verification of legal norms in mid-June 2015. The hearing of the case took place on July 1, 2015.

### KEY POINTS OF THE CONSTITUTIONAL COURT’S POSITION

The Constitutional Court explained that the Russian Federation is a full party to the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4, 1950 (hereinafter the “**European Convention**”), which is an integral part of the Russian legal system. The Constitutional Court confirmed that the Russian Federation acknowledges the jurisdiction of the ECHR, that the ECHR’s final judgment on a particular case is subject to enforcement in the Russian Federation, and that such enforcement must be based on the principle of the recognition of an ECHR judgment as part of the legal system of the Russian Federation.

However, the Constitutional Court especially noted that neither the European Convention nor the ECHR’s legal position in specific cases based on it can override the preeminence of the Constitution of the Russian Federation within the Russian legal system and, therefore, will be implemented only subject to acknowledgment of the precedence of the Constitution of the Russian Federation.

For this reason, the Constitutional Court explained, the Russian Federation may derogate from its obligations related to enforcement of a ruling of the ECHR as a contingency measure if such derogation is the only way to avoid violation of the fundamental principles and norms of the Constitution of the Russian Federation.

The Constitutional Court explained that it considers using such “right to object” against rulings of the ECHR “in exceptional cases only.” In the opinion of the Constitutional Court, a situation will be deemed such an exceptional case if the substance of a ruling of the ECHR based on the provisions of the European Convention, as construed by the ECHR in a particular case, wrongfully (from the constitutional and legal viewpoint) impinges upon the principles and norms of the Constitution of the Russian Federation.

In justifying its position, the Constitutional Court also referred to the fact that a similar approach to derogation from rulings of the ECHR as a contingency measure has been established in certain European countries, such as Germany, Italy, Austria and the United Kingdom.

The Constitutional Court elaborated the following procedure for exercising such “right to object”:

**First**, the Constitutional Court explained that in the event that a Russian court undertakes a re-examination of a case previously reviewed by it because the ECHR has issued a ruling stating that the provisions of Russian law applied in the relevant case contravene the European Convention, the Russian court must suspend the proceedings and apply to the Constitutional Court to test compliance of such provisions of Russian law with the Constitution of the Russian Federation.

It should be mentioned that such clarifications were provided by the Constitutional Court to develop the provisions introduced into the Federal Constitutional Law on the Constitutional Court of the Russian Federation in June 2014. According to such provisions, in the event of the re-examination of a case in connection with the adoption of a resolution by an intergovernmental human rights body stating that the application of a law or certain of its provisions violates human rights and freedoms in the Russian Federation, the Russian court must request the Constitutional Court to test the constitutionality of such law if it believes that the issue of whether or not such law may be applied can be solved only after its compliance with the Constitution of the Russian Federation is tested.

**Second**, the Constitutional Court also explained that the President of the Russian Federation and the Government of the Russian Federation may apply to the Constitutional Court with a request for an interpretation of the provisions of the Constitution of the Russian Federation to see whether they may apply the rulings of the ECHR. The Constitutional Court explained that this is possible in cases where the President of the Russian Federation or the Government of the Russian Federation find that they are unable to enforce a ruling of the ECHR because it is based on an interpretation of the provisions of the European Convention that brings them into conflict with the Constitution of the Russian Federation.

**Third**, the Constitutional Court also stated that lawmakers have the right to introduce a special legal mechanism for the Constitutional Court to resolve the issue of whether or not it is possible to enforce a ruling of the ECHR based on the principles of the supremacy and precedence of the Constitution of the Russian Federation.

### ANTICIPATED CONSEQUENCES

The main anticipated consequences of the Ruling include:

- The position articulated by the Constitutional Court means that a court of general jurisdiction or an *arbitrazh* court re-examining a case due to new circumstances having arisen based on a ruling of the ECHR stating that a provision of Russian law violates the European Convention will be obliged to suspend the proceedings and apply to the Constitutional Court to test the constitutionality of the relevant provisions of Russian law. No such unconditional obligation previously existed. Such new approach will considerably extend the period of re-examination of cases by courts on this basis, and will make the outcome of the re-examination of cases fully dependent on the position of the Constitutional Court.
- Taking into consideration that throughout its existence the Constitutional Court has adopted a great number of rulings testing the constitutionality of particular provisions of Russian law, we can assume that the outcome of part of these requests and, therefore, part of the cases being re-examined will be predetermined.
- It should also be mentioned that the Constitutional Court especially stated that in using the “right to object” it should be considered as contributing to the establishment of a balanced practice of the ECHR (following other members of the European Convention), motivated by the need for

constructive interaction and dialog with the ECHR and not an intention to isolate itself from the judgments of the ECHR.

Other consequences of the Ruling may be fully evaluated only after the Constitutional Court develops a certain practice of reviewing such requests and after the corresponding changes are introduced to existing law as foreshadowed by the Constitutional Court.

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Please do not hesitate to contact us with any questions.