

Client Update

Law on the Procedure for Review by the Constitutional Court of the Russian Federation of Enforcement of ECHR Judgments

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On December 15, 2015 amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation (the “Law on the Constitutional Court”) came into force, investing the Constitutional Court of the Russian Federation (the “Constitutional Court”) with powers to decide whether judgments of international human rights bodies are enforceable in Russia.¹

The key aspects of the adopted amendments are as follows:

- the amendments are geared towards the implementation of Ruling of the Constitutional Court No. 21-P dated July 14, 2015 (“Ruling No. 21-P”) on the enforcement of the judgments of the European Court of Human Rights (“ECHR”) in Russia;
- the amendments define the process by which the Constitutional Court determines whether the judgments of any international human rights bodies, including the ECHR, may or may not be enforced, which can be set in motion at the special request of an authorized federal executive body or at the request of the Russian President or the Russian Government for an interpretation of the Russian Constitution;
- the amendments provide that if the Constitutional Court issues a ruling to the effect that a judgment of an international human rights body cannot be enforced, or if the Constitutional Court interprets the provisions of the Russian Constitution as not permitting the enforcement of the judgment,

¹ Federal Constitutional Law No. 7-FKZ on Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation dated December 14, 2015.

this will mean that performing or adopting any actions or acts aimed at the implementation of the judgment in Russia is prohibited.

We set forth below a brief overview of the key new provisions, as well as related issues.

PURPOSE OF THE AMENDMENTS

The explanatory note states that the draft bill was developed in pursuance of Ruling No. 21-P on the enforcement of the judgments of the ECHR in Russia.

Recall² that in its Ruling No. 21-P, the Constitutional Court stated that in exceptional cases Russia could deviate from its obligation to enforce an ECHR judgment if this was the only possible way to avoid violation of the fundamental principles and norms of the Russian Constitution.

In considering the ways in which Russia could exercise such a right, the Constitutional Court noted that a special legal mechanism could be laid down that the Constitutional Court could use in deciding whether or not the judgments of the ECHR could be enforced from the standpoint of the principles of the supremacy and precedence of the Russian Constitution. The Constitutional Court also indicated separately that the Russian President and the Russian government may petition the Constitutional Court in this regard requesting an interpretation of the provisions of the Russian Constitution.

Not only do the new amendments define the process by which the Constitutional Court can determine whether a judgment of the ECHR may or may not be enforced, but they also address the judgments of other international human rights bodies. These include, among others, the treaty bodies of the United Nations (such as the United Nations Human Rights Committee).

MECHANISMS FOR DETERMINING WHETHER THE JUDGMENTS OF INTERNATIONAL BODIES MAY BE ENFORCED

The amendments provide for a new ground for the Constitutional Court to review cases: “an identified uncertainty as to whether the judgment of an international human rights body can be enforced if it is based on an interpretation of the provisions of an international treaty to which Russia is a party that is allegedly at variance with the Russian Constitution.” In other words, Russia cannot enforce the judgment of an international human rights body if the

² See the Debevoise & Plimpton client update, “Ruling of the Constitutional Court of the Russian Federation on Enforcement of ECHR Judgments”, dated August 17, 2015.

Constitutional Court decides that such body's interpretation of an international treaty conflicts with the Russian Constitution.

A review of such matter by the Constitutional Court may be initiated in one of two ways: (1) by requesting clarification of whether a judgment of an international human rights body can be enforced, or (2) by requesting an interpretation of the Russian Constitution.

First way provides for review by the Constitutional Court of requests for clarification of whether a judgment of an international human rights body can be enforced as a special legal procedure provided for by the new Chapter XIII.1 of the Law on the Constitutional Court.

The right to petition the Constitutional Court with such a request vests in the federal executive body authorized to defend the interests of Russia in cases heard by such international body on applications lodged against Russia (for the ECHR this is the Russian Ministry of Justice).

A determination on whether a judgment of an international human rights body can be enforced may be made either in a hearing conducted by the Constitutional Court, or without such hearing being conducted, at the discretion of the Constitutional Court, depending on whether there are past legal precedents and whether there is a need to conduct a hearing to protect the rights of a party (Art. 47.1 of the Law on the Constitutional Court).

Under the new Chapter XIII.1, the Constitutional Court determines whether the judgment of an international human rights body can be enforced "from the standpoint of the foundations of the constitutional system of the Russian Federation and the legal regulation of human and civil rights and freedoms established by the Constitution of the Russian Federation".

After considering the case the Constitutional Court issues its ruling: either that the respective judgment of the international human rights body can be enforced (in full or in part) or that it cannot be enforced (in full or in part).

If it rules that the judgment of the international human rights body cannot be enforced, this will mean that performing or adopting any actions or acts aimed at the implementation of the judgment in Russia is prohibited.

Second way provides for review by the Constitutional Court of requests for the interpretation of the provisions of the Russian Constitution in order to eliminate any uncertainty as to how they are to be construed, taking into account any

identified discrepancies between how an international human rights body has interpreted the provisions of an international treaty and the application of the provisions of the Russian Constitution to enforcement of the judgment of the respective body. Such requests may be lodged by the Russian President and the Russian government.

The procedure for hearing such cases is no different from the procedure for hearing any other cases on the interpretation of the Russian Constitution.

If the interpretation of the provisions of the Russian Constitution results in the ruling that the respective judgment cannot be enforced, this will also mean that performing or adopting any actions or acts aimed at the implementation of such a judgment in Russia is prohibited.

IMPACT OF THE AMENDMENTS

The amendments can only be fully assessed once a sufficient body of case law on implementation of the mechanisms for determining whether the judgments of international human rights bodies can be enforced has been produced. It can be expected that in considering individual requests the Constitutional Court will be guided by the approaches previously elaborated by it in more detail in Ruling No. 21-P.

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Please do not hesitate to contact us with any questions.