

# Russia's Constitutional Court Defies the European Court of Human Rights

Constitutional Court of the Russian Federation Judgment of  
14 July 2015, No 21-II/2015

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## INTRODUCTION

In this landmark judgment, the Constitutional Court of the Russian Federation redefined its relationship with the European Convention on Human Rights and the European Court of Human Rights. Moreover, one can say that the redefinition towards the European human rights protection system was undertaken by the entire Russian government, since in December 2015, the State Duma and the Federation Council, the two chambers of the Russian parliament, made amendments to the Federal Constitutional Law 'On the Constitutional Court of the Russian Federation' which subsequently gave a legislative foundation and concrete procedures to the approach envisaged in the 14 July 2015 judgment of the Constitutional Court.<sup>1</sup> Thus, the judgment was not merely a solo action of the latter, but quickly received the backing of the legislature in Russia. Moreover, already in April 2016 the Constitutional Court delivered its first judgment using the new mechanism.

In this case note, I will initially discuss the wider context of the case and then present the argumentation and conclusions of the Constitutional Court in the judgment. Furthermore, I will critically analyse the Court's judgment, *inter alia*

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<sup>1</sup>N 7-ФКЗ, Federal Constitutional Law on the Introduction of Amendments to the Federal Constitutional Law 'On the Constitutional Court of the Russian Federation', approved by the State Duma on 4 December 2015 and by the Federation Council on 9 December 2015; entered in force on 14 December 2015.

*European Constitutional Law Review*, 12: 377–395, 2016

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doi:10.1017/S1574019616000237

drawing on publications of its Chairman, Valery Zorkin, which had earlier highlighted the main political-legal ideas that have now been expressed by the Court.<sup>2</sup> Additionally, I will answer the question of whether the judgement of the Russian Constitutional Court is an outlier among the Council of Europe countries or, to the contrary, not so unique after all. Finally, the question will be discussed whether after this judgment and the adoption of the respective law, Russia is still willing to respect its international legal obligations as state party to the European Convention on Human Rights.

An English translation of the case is not available at the website of the Court; only a short synopsis is.<sup>3</sup> Therefore I have used my own translation of the Russian original of the judgment.<sup>4</sup>

### CONTEXT OF THE JUDGMENT OF THE CONSTITUTIONAL COURT

The case emerged when a ‘group of deputies’ of the State Duma, the lower chamber of the Russian parliament, asked the Court to clarify in the framework of abstract norm control whether certain legal norms specifying the role of the judgments of the European Convention in the Russian legal order were compatible with the Constitution of the Russian Federation. To the extent that these norms seemed to unconditionally facilitate and demand the enforcement of judgments of the Strasbourg Court in Russia, they did not seem to be – according to the deputies – compatible with the Constitution in cases when judgments of the Strasbourg Court requested things that were in contradiction to the Constitution. Or at least, there was a certain ‘indeterminacy’ in this regard which the deputies asked the Court to clarify.

The political context and timing of such cases is always relevant, and yet such aspects are usually open to interpretation. On the most immediately visible level, the Strasbourg Court had decided on 4 July 2013, in the *Anchugov and Gladkov v Russia* case, that Russia had violated Article 3 of Protocol 1 of the Convention by not allowing its convicted prisoners to vote in state elections.<sup>5</sup> This judgement of the Strasbourg Court was in line with similar cases concerning voting rights of prisoners in other Council of Europe countries, especially the *Hirst v UK* case.<sup>6</sup> However, Article 32 of the Russian Constitution stipulates explicitly that prisoners do not have the right to vote or be elected. Therefore, it could be reasonably argued

<sup>2</sup>V. Zorkin, *Pravo v usloviakh global'nykh peremen* [Law in the Conditions of Global Changes] (Norma 2013) p. 288 and 469.

<sup>3</sup><[www.ksrf.ru/en/Decision/Judgments/Documents/resume%202015%2021-%D0%9F.pdf](http://www.ksrf.ru/en/Decision/Judgments/Documents/resume%202015%2021-%D0%9F.pdf)>, visited 27 June 2016.

<sup>4</sup><[doc.ksrf.ru/decision/KSRFDecision201896.pdf](http://doc.ksrf.ru/decision/KSRFDecision201896.pdf)>, visited 27 June 2016.

<sup>5</sup>ECtHR 4 July 2013, Case Nos. 1157/04 and 15162/05, *Anchugov and Gladkov v Russia*.

<sup>6</sup>ECtHR 6 October 2005, Case No. 74025/01, *Hirst v United Kingdom (No 2)*.

that implementing the *Anchugov and Gladkov* judgment of the Strasbourg Court was indeed irreconcilable with the Russian Constitution. According to this reading, the impetus for this case in the Court initiated by a group of State Duma deputies was given by the need to solve a straightforward conflict that had emerged between the Russian Constitution and an interpretation of the Convention given by the Strasbourg Court.

At the same time, it has also been suggested that the political initiative by the State Duma members in this case may have been triggered by another recent judgment of the Strasbourg Court that was financially very unfavourable for Moscow and politically more high-profile than the question of prisoners' voting rights. On 31 July 2014, the Strasbourg Court issued its award in the case of the oil company *Yukos* and held that the Russian government had to pay almost €1.9 billion to former shareholders of *Yukos*.<sup>7</sup> Based on remarks that Russia's representative at the Strasbourg Court and Deputy Minister of Justice, Georgy Matyushkin<sup>8</sup> made at a conference in Moscow, Maria Smirnova has suggested a link between the Strasbourg Court's *Yukos* judgment and the case initiated by parliamentarians in the Constitutional Court.<sup>9</sup> While it remains unclear how exactly paying the Strasbourg Court's award to the *Yukos* shareholders might be construed as 'unconstitutional' in Russia, it is a fact that Moscow has so far not paid the €1.9 billion compensation awarded by the Strasbourg Court to *Yukos* shareholders. If avoiding the payment of the Strasbourg Court's award in the *Yukos* case is what Moscow wants to do, then arguments based on constitutional conflict may become one attempt to avoid the payment. At the same time, the Investigative Committee of the Russian Federation has recently suggested that the very privatisation of the *Yukos* company in the early 1990s was illegal,<sup>10</sup> which suggests that using this argument might become another strategy of the Russian government to avoid the execution of the judgment.

Most likely, the context of this case in the Constitutional Court was not even created by a single judgment of the Strasbourg Court and in this sense, the

<sup>7</sup> ECtHR 31 July 2014, Case No. 14902/04, *Neftyanaya Kompaniya Yukos v Russia*.

<sup>8</sup> Anonymous 'Miniust nazval reshenie ESPCh po vyplatam aktsioneram YUKOSa protivorechashchim zdarovomu smyslu' [Ministry of Justice Called the Judgment of the ECtHR on Payments to Stock Holders of *Yukos* Contrary to Common Sense], *Interfaks*, 10 July 2015, <[www.interfax.ru/russia/452886](http://www.interfax.ru/russia/452886)>, visited 27 June 2016.

<sup>9</sup> See e.g. M. Smirnova, 'Russian Constitutional Court Affirms Russian Constitution's Supremacy over ECtHR Decisions', *EJIL Talk*, 15 July 2015, <[www.ejiltalk.org/russian-constitutional-court-affirms-russian-constitutions-supremacy-over-ecthr-decisions/](http://www.ejiltalk.org/russian-constitutional-court-affirms-russian-constitutions-supremacy-over-ecthr-decisions/)>, visited 27 June 2016.

<sup>10</sup> A. Zanina and A. Sokovnin, 'Sledstvennyi komitet doshel do Gaagi' [*Investigative Committee Went To The Hague*], *Kommersant*, 26 March 2016, <[www.kommersant.ru/doc/2948912](http://www.kommersant.ru/doc/2948912)>, visited 27 June 2016.

*Anchugov and Gladkov* case only brought to fore concerns that had already started to crystallise. Anyone who had followed earlier writings and speeches of the Chairman of the Court, Valery Zorkin, might be able to detect the rise of a more fundamental and ideologically-grounded criticism of the Strasbourg Court and its judgments. For example, Judge Zorkin has repeatedly expressed his dissatisfaction with the *Konstantin Markin v Russia*<sup>11</sup> and the *Kononov v Latvia (Grand Chamber)*<sup>12</sup> judgments of the Strasbourg Court.<sup>13</sup> As early as 2013, Judge Zorkin wrote that a key – although ‘delicate’ – question was whether new interpretations of the Convention made in judgments of the Strasbourg Court necessarily corresponded to the Russian Constitution.<sup>14</sup> The previous Russian judge at the Strasbourg Court, Anatoly Kovler, also observed that the problem of the interrelationship between Russia’s constitutional law and European human rights law had grown more and more acute over the last few years.<sup>15</sup>

So what may have finally pushed Russian parliamentarians and the judges of the Constitutional Court to tackle this ‘delicate’ question in 2015? Immediately after the 2010 *Markin* judgment of the Strasbourg Court, calls to solve the tension between Russia and the Convention (or the Strasbourg Court) in favour of Russia’s Constitution, made by parliamentarians such as Alexander Torshin, did not lead to immediate action. Most likely, the political background for the Constitutional Court’s case and judgment was created by a significant worsening of political and economic relations between Russia and the West since early 2014. When Russia annexed Crimea and the war in Eastern Ukraine broke out, the West responded with various sanctions and Russia in turn reciprocated with its own sanctions *inter alia* against western agricultural products. In the Council of Europe context, the voting rights of the Russian parliamentarians in the Parliamentary Assembly were suspended in 2014. In the conditions of worsening relations with Europe and the West, what had already earlier been in the mind of the chief judge at the Russian Constitutional Court regarding the Strasbourg Court became now easier to speak out in concrete terms.

<sup>11</sup> ECtHR 7 October 2010 (first section) and 22 March 2012 (Grand Chamber), Case No. 30078/06, *Konstantin Markin v Russia*. See also L. Mälksoo, ‘Markin v Russia’, 106 *AJIL* (2012) p. 836.

<sup>12</sup> ECtHR 17 October 2010, Case No. 36376/04, *Kononov v Latvia*. See also L. Mälksoo, ‘Kononov v Latvia’, 105 *AJIL* (2011) p. 101.

<sup>13</sup> Zorkin, *supra* n. 2, pp. 257 and 273.

<sup>14</sup> *Ibid.*, p. 256.

<sup>15</sup> A. Kovler, ‘Sootnoshenie evropeiskogo konventsionnogo i natsional’nogo konstitutsionnogo prava – obostrenie problemy (prichiny i sledstvia) [*Interrelationship of the European Convention and the National Constitutional Law: Deepening of the Problem (Reasons and Consequences)*], in 1 *Russian Yearbook of the European Convention on Human Rights* (Statut 2015) p. 19.

## OVERVIEW OF THE JUDGMENT

Coming now to the judgment itself, the Court started out by emphasising the state sovereignty and the primacy of the Constitution in the legal order of the Russian Federation.<sup>16</sup> From this premise, the Court also immediately drew its main conclusion in the case: if a judgment of the Strasbourg Court collides with the Constitution, Russia has the right not to implement measures foreseen in the judgment of the Strasbourg Court in its legal order if such a response remains the only possible means to avoid violating 'principles and norms of the Constitution'.<sup>17</sup> Later on, the Court drew from this self-proclaimed right of Russia an obligation on the pertinent Russian state authorities to turn to the Court in case of suspicion that the Constitution would be violated by enforcing a judgment of the Strasbourg Court.

But how could such a collision with the Strasbourg Court happen? The Constitutional Court pictured the possibility that the Strasbourg Court would give a different and 'unusual' meaning to the stipulations agreed upon by the member states of the Convention, and interpret the initial treaty terms beyond their object and purpose.<sup>18</sup> Moreover, the Court warned that theoretically, treaties might even be interpreted in violation of *jus cogens* norms to which belong 'the principle of sovereign equality and respect of rights belonging to sovereignty, but also the principle of non-intervention in internal affairs of states'.<sup>19</sup> Since the Convention has a high degree of abstraction, it was also possible that its further concretisation by the Strasbourg Court might collide with the Russian Constitution, 'first of all concerning rights and freedoms of human beings and citizens but also concerning foundations of the constitutional edifice including state sovereignty and highest juridical power of the Constitution of the Russian Federation'.<sup>20</sup>

According to the Court, such a collision with the Constitution and the priority of the Russian Constitution would not mean that the international treaty would become entirely inapplicable towards Russia, but only that the treaty norm's interpretation in the concrete case by the international judicial or monitoring body could not be followed in Russia.<sup>21</sup> The harmonisation of Russian law with the international treaty as specified by the international judicial or monitoring body can only be carried out to the extent it does not 'generate contradictions with the Constitution of the Russian Federation'.<sup>22</sup>

<sup>16</sup> 2.2 at p. 11-12.

<sup>17</sup> 2.2 at p. 13.

<sup>18</sup> 3 at p. 13.

<sup>19</sup> 3 at p. 14.

<sup>20</sup> 3 at p. 15.

<sup>21</sup> 3 at p. 16.

<sup>22</sup> 3 at p. 16.

Furthermore, the Constitutional Court pointed out that, although the Russian Constitution and the Convention are generally based on the same basic values, an interpretation of the Strasbourg Court might still also contradict 'constitutional values' of the Russian Federation.<sup>23</sup> Thus, the Constitution might even more completely than the Convention or the Strasbourg Court interpreting it 'ensure the protection of the rights and freedoms of human beings and citizens, including in the balance of rights and freedoms of other persons'.<sup>24</sup>

The Court then explained that the position that it takes is not exceptional among the Council of Europe member states and refers by comparison to an arguably similar record of the German Constitutional Court,<sup>25</sup> the Italian Constitutional Court,<sup>26</sup> a case of the Austrian Constitutional Court from 1987,<sup>27</sup> and the Supreme Court of the UK related to the case of prisoners' voting rights.<sup>28</sup> According to the Court, all these foreign cases deal with collisions between European and constitutional interpretations of human rights 'in the legal system of the given state, keeping in mind not only the person who requested protection, but also all these whose rights and freedoms may be affected'.<sup>29</sup>

The Court then turned to the previous Russian experience and first mentions the *Konstantin Markin v Russia* case, in which the views of the Russian Constitutional Court and the Strasbourg Court turned out different in a matter of unequal state entitlements to male and female parents serving in the Army.<sup>30</sup> According to the Court, it was not obvious (*neodnoznachno*) that the Strasbourg Court had, with its interpretation, offered a better protection of human rights and freedoms than the Court itself.<sup>31</sup> Furthermore, according to the Court, even more obvious was the collision with stipulations of the Russian Constitution in a case such as *Anchugov and Gladkov v Russia*.

<sup>23</sup> 4 at p. 17.

<sup>24</sup> 4 at p. 17.

<sup>25</sup> BVerfG, Order of 14 October 2004 - 2 BvR 1481/04 - Rn. (1-72), <[www.bverfg.de/e/rs20041014\\_2bvr148104en.html](http://www.bverfg.de/e/rs20041014_2bvr148104en.html)>, visited 27 June 2016.

<sup>26</sup> Italian Constitutional Court, *Maggio and others v Italy*, Judgment No. 264, 2012, <[www.cortecostituzionale.it/documenti/download/doc/recent\\_judgments/S2012264\\_Quaranta\\_Morelli\\_en.pdf](http://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S2012264_Quaranta_Morelli_en.pdf)>, visited 27 June 2016.

<sup>27</sup> No. B267/86.

<sup>28</sup> Judgment, R (on the application of Chester) (Appellant) v Secretary of State for Justice (Respondent); McGeoch (AP) (Appellant) v The Lord President of the Council and another (Respondents) (Scotland), 16 October 2013, [2013] UKSC 63, <[www.supremecourt.uk/decided-cases/docs/UKSC\\_2012\\_0151\\_Judgment.pdf](http://www.supremecourt.uk/decided-cases/docs/UKSC_2012_0151_Judgment.pdf)>, visited 27 June 2016.

<sup>29</sup> 4 at p. 21.

<sup>30</sup> ECtHR 7 October 2010 (First Section) and 22 March 2012 (Grand Chamber), Case No. 30078/06, *Konstantin Markin v Russia*.

<sup>31</sup> 4 at p. 21.

Thus, the Court repeated that if interpretation of the Convention by the Strasbourg Court would lead to a direct collision with the Russian Constitution, such a judgment cannot be enforced in Russia.<sup>32</sup> Accordingly, if competent state organs of the Russian Federation responsible for the enforcement of the judgments of the Strasbourg Court in the Russian legal order came to the conclusion that such a contradiction existed, and actions and decisions that were required for the implementation of a judgment of the Strasbourg Court might lead to the violation of the Constitution, they must turn to the Court for guidance and authoritative decision. Such a mechanism should be possible even in cases where Russian courts were not involved with enforcement of the case but where instead the responsibility in terms of implementation lay with other Russian state authorities.<sup>33</sup>

The Court also highlighted the 2012 Brighton Declaration adopted by the High Level Conference on the Future of the Strasbourg Court<sup>34</sup> which emphasised the importance of the principle of subsidiarity in its functioning. The Court pointed out that the interaction of European and constitutional legal orders would be impossible under conditions of subordination and that the Strasbourg Court must respect 'national constitutional identities' of the Council of Europe member states.<sup>35</sup> When supranational organs such as the Strasbourg Court pay 'special attention' to 'foundational elements of such constitutional identity', the potential for conflict and collision between European and constitutional levels will be reduced significantly.<sup>36</sup> At the same time, according to the Russian Constitutional Court, the Strasbourg Court has not always respected the principle of subsidiarity.<sup>37</sup>

In conclusion, the Court held that the provisions invoked by the 'group of deputies' in the Russian legislation were not in contradiction with the Constitution on the basis of the 'constitutional legal meaning' of such norms. In the future, Russian courts and competent state organs that developed doubts about the constitutionality of the implementation measures based on judgments of the Strasbourg Court had to request the respective authoritative opinion by the Constitutional Court.

As indicated in the beginning of this case note, the course of action suggested by the Court was turned into positive law by the Russian parliament, which in December 2015 introduced the amendments to the Federal Constitutional Law

<sup>32</sup> 5.3 at p. 27.

<sup>33</sup> 5.3 at p. 28.

<sup>34</sup> <[www.echr.coe.int/Documents/2012\\_Brighton\\_FinalDeclaration\\_ENG.pdf](http://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf)>, visited 27 June 2016.

<sup>35</sup> 5.3 at p. 29.

<sup>36</sup> 5.3 at p. 30.

<sup>37</sup> 5.3 at p. 31.

‘On the Constitutional Court of the Russian Federation’.<sup>38</sup> In early February 2016 it was reported that the Ministry of Justice had filed the first petition at the Court under the newly-established mechanism, petitioning that the Strasbourg Court’s judgment in *Anchugov and Gladkov v Russia* would not be enforced in Russia because it would contradict the Constitution.<sup>39</sup> On 19 April 2016, the Constitutional Court ruled that it was impossible to enforce the European Court of Human Rights’ *Anchugov and Gladkov* judgment in Russia.<sup>40</sup>

### ANALYSIS AND CRITIQUE OF THE JUDGMENT OF THE RUSSIAN CONSTITUTIONAL COURT

At the beginning of this case note I called the 14 July 2015 judgment of the Russian Constitutional Court a ‘landmark’ judgment. This is a quite big word and sometimes subject to inflation in the commentary. Therefore, using it in the context of the Court’s judgment will need some clarification. While explaining my own perspective on the case, I can *inter alia* relate to the interim opinion of the European Commission for Democracy through Law (the Venice Commission) on the case and the respective Russian law, which has been published recently.<sup>41</sup>

In my opinion, the 14 July 2015 judgment is indeed a landmark because it officially gave a new direction to the discourse of European human rights law and constitutionalism in Russia. Foreign legal scholars had observed that in the 1990s, even before Russia ratified the ECHR in 1998, the Constitutional Court was probably the most ‘enlightened’ Russian court because it regularly included sympathetic references to the Convention and judgments of the Strasbourg Court in its own judgments.<sup>42</sup> The Russian cases in Strasbourg that triggered the

<sup>38</sup> *Supra* n. 1.

<sup>39</sup> A. Pushkarskaia, ‘Reshenia ESPCh – Ni v Zhizhn’ [*Judgments of the ECtHR – Not for Implementation*], *Kommersant*, 2 February 2016, <[www.kommersant.ru/doc/2906219](http://www.kommersant.ru/doc/2906219)>, visited 27 June 2016.

<sup>40</sup> Judgment of the Russian Constitutional Court concerning permitting the possibility of enforcement in accordance with the Constitution of the Russian Federation of the judgment of the European Court of Human Rights of 4 July 2013 in the case of ‘Anchugov and Gladkov vs Russia’ in connection with the request of the Ministry of Justice, 19 April 2016, No. 12-II/2016, <[doc.ksrfr.ru/decision/KSRFDecision230222.pdf](http://doc.ksrfr.ru/decision/KSRFDecision230222.pdf)>, visited 27 June 2016.

<sup>41</sup> See European Commission for Democracy through Law (Venice Commission), Opinion No. 832/2015, Interim Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation, 15 March 2016.

<sup>42</sup> See A. Nußberger, *Ende des Rechtsstaats in Russland? Probleme der rechtsstaatlichen Entwicklung im Spiegel der Rechtsprechung des Russischen Verfassungsgerichts und des Europäischen Gerichtshofs für Menschenrechte* (Verlag Dr Otto Schmidt 2007); A. Nußberger et al., *Verfassungsrechtsprechung in der Russischen Föderation. Dokumentation und Analyse der Entscheidungen des Russischen Verfassungsgerichts 1992-2007* (N.P.Engel 2009).



dissatisfaction of the executive in Moscow (for example, some of the Chechen cases and *Ilaşcu*<sup>43</sup>) did not immediately trigger a systemic backlash at the Constitutional Court.

Moreover, relatively recent interpretations of the other highest Russian court, the Supreme Court, emphasised *inter alia* that 'the legal positions of the European Court of Human Rights contained in the final judgments of the Court delivered in respect of the Russian Federation are obligatory for the courts.'<sup>44</sup> It did not mention any issues of constitutionality related to such judgments.<sup>44</sup> The very ideology of the Supreme Court's 2013 interpretation of the Convention in the Russian legal system was to set out ways that lower Russian courts could better take into account judgments of the Strasbourg Court. This approach is in conformity with the spirit of Article 15 para 4 of the Russian Constitution, which emphasises the high rank of international law in the Russian legal system.

For the Russian Constitutional Court, apparently, the mental turning point was the *Markin v Russia* case in which it and the Strasbourg Court expressed different philosophies when approaching the issue: the interpretation of the Russian Constitutional Court was remarkably more statist. *Markin v Russia* was also the first case in which the dialogue on the meaning of human rights was no longer abstract or concerning opinions of other Russian courts than the Constitutional Court. Instead, in *Markin* the Russian Constitutional Court was directly and adversely affected by the Strasbourg Court because there had been an interpretation of the Constitutional Court in the case, with which both the Chamber and the Grand Chamber of the Strasbourg Court disagreed.

Thus, back in October 2010, Judge Zorkin proclaimed in an emotional newspaper article in *Rossiiskaya gazeta* that his patience with problematic judgments coming from the Strasbourg Court would soon be exhausted, since such judgments were increasingly at odds with Russia's sovereignty and societally prevailing concepts of morality.<sup>45</sup>

Therefore, the Court's July 2015 judgment did not come out of the blue. Judge Zorkin's opposition to the judicial activism of the Strasbourg Court has over the last years been as programmatic as his support for the principles of subsidiarity and margin of appreciation in the context of the Strasbourg Court has been vocal. In particular, Judge Zorkin has criticized stretching too far the claim of the universality of human rights and has argued taking into account as much as

<sup>43</sup> ECtHR 8 July 2004, Case No. 48787/99, *Ilaşcu and Others v Moldova and Russia*.

<sup>44</sup> Plenum of the Supreme Court ruling 'On Application of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and Additional Protocols thereto by Courts of General Jurisdiction', 27 June 2013, <[www.supcourt.ru/vscourt\\_detale.php?id=9155](http://www.supcourt.ru/vscourt_detale.php?id=9155)>, para 2, visited 27 June 2016.

<sup>45</sup> V. Zorkin, 'Predel ustupchivosti' [*Margin of Concessions*], *Rossiiskaya gazeta*, 29 October 2010, <[www.rg.ru/2010/10/29/zorkin.html](http://www.rg.ru/2010/10/29/zorkin.html)>, visited 27 June 2016.

possible the cultural and historical peculiarities of each Council of Europe member state, most concretely in Russia and elsewhere in eastern Europe.<sup>46</sup>

Judge Zorkin criticised the Strasbourg Court's judgments not only in Russian (or Russia-related) cases such as *Markin* and *Kononov* but more broadly also concerning other Council of Europe countries such as the chamber judgment in *Lautsi v Italy* ordering the ban of the use of crucifixes in Italian classrooms (the decision was later reversed by the Grand Chamber).<sup>47</sup> Behind such criticisms are both official Russia's reluctance to seriously engage in transitional justice and meaningfully deal with Communist era crimes (*Kononov*) and generally the more traditionalist understanding of human rights (*Markin* and conservative gender roles as well as the special role of the Russian Army; *Lautsi* and the *de facto* special status of Christianity in Europe). In his newest monograph entitled 'Civilization of the Law and Development of Russia' published after the 2015 judgment of the Court, Judge Zorkin critically observed that the Strasbourg Court is itself insufficiently subject to democratic checks and balances in the Council of Europe system, which is why for Zorkin the whole desire of wanting to make the Strasbourg Court the European constitutional court of sorts appears problematic.<sup>48</sup>

Logically, completing Judge Zorkin's and others' increasingly critical thinking on the Strasbourg Court in Russia, the 14 July 2015 judgment formulated a red line from the viewpoint of the Russian Constitutional Court. It indicated that in future controversial or, from its perspective, *ultra vires* cases, the Court would start to exercise certain checks and balances towards the Strasbourg Court, considering the Russian Constitution hierarchically superior to the Strasbourg Court's interpretations of the Convention that might contradict its norms.

Practically, the most important question now is how far the Court will go with this line of thinking in its future practice concerning concrete cases. At one level there are relatively plain and obvious collisions between the Constitution and a judgment of the Strasbourg Court, for example when the Constitution itself denies voting rights to the prisoners and yet the Strasbourg Court considers it incompatible with the Convention, as in the *Anchugov and Gladkov* case. In an ideal world, such a direct collision between the Constitution and the Convention should have been liquidated in Russia before the State Duma ratified the Convention in 1998. However, the first such case in the Strasbourg Court on prisoners' voting rights, the *Hirst v UK* case, was indeed decided only in 2005, i.e. after Russia's ratification of the Convention. In 1998 the decision-makers both in

<sup>46</sup> Zorkin, *supra* n. 2, p. 10 ff, 278.

<sup>47</sup> Zorkin, *supra* n. 2, p. 256. See ECtHR 3 November 2009, Case No.30814/06, *Lautsi v Italy*.

<sup>48</sup> V. Zorkin, *Tsivilizatsia prava i razvitie Rossii* [Civilization of Law and the Development of Russia] (Norma 2016) p. 150.

Strasbourg and Moscow were probably not even fully aware of such a conflict between a specifically Russian constitutional norm and the Convention.

Very few Council of Europe members seem to have in their Constitution the norm that prisoners may not vote. Another way of solving such a conflict would then have been to recognise this and amend the Russian Constitution respectively. Either way, such plain and open conflicts between the Russian Constitution and an interpretation of the Convention by the Strasbourg Court would remain a rare exception, because when the Russian Constitution of 1993 was adopted, its drafters and their foreign advisers took into account the Council of Europe's norms and standards to the extent that was possible.

However, the judgment of the Russian Constitutional Court goes further than addressing open conflicts between the Constitution and judgments on the Convention and imagines possible tensions with the Strasbourg Court in cases where differences are constructed via interpretation, in that it talks critically of 'unusual meanings' given to traditional notions by the Strasbourg Court. Interestingly, the interim opinion of the Venice Commission bypasses this aspect,<sup>49</sup> but it should not be considered irrelevant.

Although the judgment of the Court does not explicitly mention this example, it is possible to imagine in this context the notion of 'family', and the perspective that the Russian Constitutional Court might want to reject what it may see as the Strasbourg Court's attempts to extend lesbian, gay, bisexual, and transgender rights in Russia. Article 38 paragraph 1 of the Russian Constitution stipulates that 'the family shall be protected by the State'. Facing judgments of the Strasbourg Court condemning Russia for the violation of lesbian, gay, bisexual, and transgender rights, even in the context of freedom of assembly, it cannot be ruled out that the Court might in principle decide to use the constitutional argument of 'protecting family'. Although the Strasbourg Court has found Russia to violate the Convention because of its ban on gay pride marches,<sup>50</sup> on 11 June 2013 Russia adopted a law banning the 'propaganda of non-traditional sexual relations to minors'.<sup>51</sup> There are further similar pending cases in the Strasbourg Court, *inter alia* by the same applicant.<sup>52</sup> Moreover, in his 2010 *Rossiiskaya gazeta* article, Zorkin had already criticised the extension of lesbian, gay, bisexual, and transgender rights via the

<sup>49</sup> See Interim opinion, *supra* n. 41, para 75.

<sup>50</sup> See ECtHR 21 October 2010, Case Nos. 4916/07, 25924/08 and 14599/09, *Alekseyev v Russia*.

<sup>51</sup> Kodeks ob administrativnykh pravonarusheniakh [Code of Administrative Offences], N 195-Φ3, Art. 6.21.

<sup>52</sup> See Anonymous 'Evropiiskii Sud kommunitiroval Rossii dva dela o zaprete bolee sotni LGBT-meropriatii v sem'i gorodakh' [*The European Court Communicated to Russia Two Cases on the Prohibition of More than A Hundred LGBT Events in Seven Cities*], *Gayrussia*, 1 February 2016, <[www.gayrussia.eu/russia/12664/](http://www.gayrussia.eu/russia/12664/)>, visited 27 June 2016.

judicial activism of the Strasbourg Court.<sup>53</sup> He continues to express himself critically in this regard in his newest 2016 monograph.<sup>54</sup>

Perhaps even more far-reaching than the point on ‘unusual meanings’ of concepts that the Strasbourg Court may employ are the Constitutional Court’s references to Russia’s constitutional identity and values and the possibility that the Strasbourg Court’s interpretations might contradict them as well. Here everything depends on how Russia’s constitutional identity will be constructed and which constitutional values will be emphasised by the Court. Like any other constitution of a major country, the Russian Constitution has become subject to rich scholarly commentary.<sup>55</sup> On some level we know, more or less, what the Russian Constitution says and what it does not say. Nevertheless, it remains ultimately for the Russian Constitutional Court to interpret and decide what the Russian Constitution’s underlying values are and what its core identity is. ‘Constitutional identity’ itself is a contested concept worldwide.<sup>56</sup> Although the text of the Constitution adopted in 1993 has friendly and open formulations on international treaties and human rights, the subsequent practice of the Russian government has emphasised one element in Russia’s constitutional identity perhaps more than anything else – state sovereignty.<sup>57</sup> This is a paradox to some extent, because there is a natural tension between the principle of state sovereignty and the protection of human rights at the European level in the Council of Europe.

In any case, if in 2010 Judge Zorkin spoke of the ‘limit to making concessions’ in the context of judicial activism of the Strasbourg Court, then now, in his new monograph published in early 2016, he specifies what such limits would be for Russia:

The limit to our concessions are the protection of human and citizens’ rights and freedoms, of our sovereignty, our national institutions and national interests. Our Constitution mandates us to do this.<sup>58</sup>

To the extent that the constitutional identity may increasingly be interpreted in the light of ‘national interests’ as they are defined by adversary politics of Russia

<sup>53</sup> Zorkin, *supra* n. 45.

<sup>54</sup> Zorkin, *supra* n. 48, p. 152-154.

<sup>55</sup> See e.g. V. Zorkin (ed.) *Kommentarii k Konstitutsii Rossijskoj Federatsii* [Commentaries to the Constitution of the Russian Federation], 3<sup>rd</sup> edn. (Norma 2013); J. Henderson, *The Constitution of the Russian Federation. A Contextual Analysis* (Hart 2011); B. Wieser, *Handbuch der russischen Verfassung* (Verlag Österreich 2014).

<sup>56</sup> See M. Rosenfeld, ‘Constitutional Identity’, in M. Rosenfeld and A. Sajó (eds.) *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2012) p. 756.

<sup>57</sup> For a larger argument on this in the context of international law, see L. Mälksoo, *Russian Approaches to International Law* (Oxford University Press 2015).

<sup>58</sup> Zorkin, *supra* n. 48, p. 156.

and the West, it may mean further trouble from the perspective of the enforcement of judgments of the Strasbourg Court in Russia.

Another open-ended point that the Court makes in the judgment is when it suggests that sometimes rights may be better protected at the Russian constitutional level than at the European level of the Strasbourg Court. This trope seems to be directly borrowed from the rhetoric of Constitutional Courts in older European democracies such as Germany and Italy<sup>59</sup> and at least to me, it does sound a little artificial in the context of Russia's own troubled history of constitutional control and fundamental rights. In its judgment, the Court emphasises that it intends to 'ensure the protection of the rights and freedoms of human beings and citizens, including in the balance of rights and freedoms of other persons'.<sup>60</sup>

This situation is no longer about open conflict with the text of the Russian Constitution like arguably was in *Anchugov and Gladkov*, but about further weighing, interpretation and value judgments. For example, Judge Zorkin has recently continued to elaborate on his disagreement with the Strasbourg Court on the 2010 *Markin* judgment, in which different preferences of the Russian Constitutional Court and the Strasbourg Court cannot be explained away by references to the text of the Russian Constitution. Judge Zorkin's main point seems to be that what may have been beneficial for Markin as an individual may not have been good or appropriate for Russia as a nation, or the Russian Army.<sup>61</sup> Thus, we can envisage that in the future, not only in cases like *Anchugov and Gladkov*, but also like *Markin*, the Court may distance itself from judgments of the Strasbourg Court. Altogether, this seems to be in the first place a warning of the Constitutional Court to the Strasbourg Court to be careful when critically dismissing judgments of the former. In pointing out the 'balance of rights' issue, the Court highlights a certain collective element of the rights discourse beside that of individual entitlements. Ideologically, this more collectivist approach differs from the individualist approach to rights that the Strasbourg Court typically takes.<sup>62</sup>

Last but not least, the Court makes much effort to make its judgment appear as fully in line with practices elsewhere, i.e. as essentially following earlier precedents of other Constitutional Courts in 'old Europe'. This approach is simultaneously echoed in Judge Zorkin's own writings in which previous examples of older Council of Europe members such as Germany, Austria, France and Switzerland are referred to when making the case for the new approach of the Russian

<sup>59</sup> See the Italian Constitutional Court's Judgment No. 264, 2012, *supra* n. 26, para. 4.1.

<sup>60</sup> 4 at p. 17. But see further Zorkin, *supra* n. 48, p. 155.

<sup>61</sup> Zorkin, *supra* n. 48, p. 164 ff.

<sup>62</sup> See critically on the predominantly individualistic philosophy employed by the ECtHR in K. Löhmus, *Caring Autonomy. European Human Rights Law and the Challenge of Individualism* (Cambridge University Press 2015).

Constitutional Court that shows the Strasbourg Court its limits.<sup>63</sup> In particular, Judge Zorkin seems to proceed from what he calls the German ‘precedent’.<sup>64</sup> This comparative European aspect deserves further examination here, also including the UK analogy, because both in the UK and in the Russian Federation the national political ‘resistance’ to the Strasbourg Court has been recently provoked by the issue of prisoners’ voting rights. There is a plausible opinion that the recalcitrance of the UK in the case of prisoners’ voting rights, in particular, may also have encouraged the Russian Constitutional Court.<sup>65</sup> In the UK, the judgment of the Strasbourg Court in *Hirst* has not been executed along the lines indicated by the European judges, and the country has not changed its respective laws and practices on voting rights.

In the German *Görgülü* case to which both the Russian Constitutional Court’s judgment and Judge Zorkin (individually in his writings) refer, the German Constitutional Court said that a judgment of the Strasbourg Court<sup>66</sup> is binding on Germany as a subject of international law but not directly binding on German courts. The German Constitutional Court further stated:

As a result of the status of the European Convention on Human Rights as ordinary statutory law below the level of the constitution, the European Court of Human Rights was not functionally a higher-ranking court in relation to the courts of the State parties. For this reason, neither in interpreting the Convention nor in interpreting national fundamental rights could domestic courts be bound by the decisions of the European Court of Human Rights.<sup>67</sup>

Furthermore, the German Constitutional Court stated in the same *Görgülü* judgment:

As long as applicable methodological standards leave scope for interpretation and weighing of interests, German courts must give precedence to interpretation in accordance with the Convention. The situation is different only if observing the decision of the European Court of Human Rights, for example because the facts on which it is based have changed, clearly violates statute law to the contrary or German constitutional provisions, in particular also the fundamental rights of third parties. ‘Take into account’ means taking notice of the Convention provision as interpreted by the European Court and applying it to the case, provided the application does not

<sup>63</sup> Zorkin, *supra* n. 2, p. 463-464.

<sup>64</sup> Zorkin, *supra* n. 48, p. 147-156.

<sup>65</sup> P. Leach and A. Donald, ‘Russia Defies Strasbourg. Is Contagion Spreading?’ *EJIL Talk*, 19 December 2015, <[www.ejiltalk.org/russia-defies-strasbourg-is-contagion-spreading/](http://www.ejiltalk.org/russia-defies-strasbourg-is-contagion-spreading/)>, visited 27 June 2016.

<sup>66</sup> See concretely ECtHR 26 February 2004, Case No. 74969/01, *Görgülü v Germany*.

<sup>67</sup> See BVerfG, Order of 14 October 2004, *supra* n. 25, para. 18.

violate prior-ranking law, in particular constitutional law. In any event, the Convention provision as interpreted by the European Court of Human Rights must be taken into account in making a decision; the court must at least duly consider it.<sup>68</sup>

Interpretations of the *Görgülü* judgment of the German Constitutional Court have been mixed in the German legal scholarship. For example, Christian Tomuschat has called the phrases chosen by the German Constitutional Court in the *Görgülü* case 'unclear' or 'capable of being misunderstood' (*mißverständlich*).<sup>69</sup> Yet the German Constitutional Court's *Görgülü* judgment can indeed be understood as suggesting that if a judgment of the Strasbourg Court would contradict the German Constitution, it cannot be enforced in that country. In this sense, not even the statement in the judgment of the German Constitutional Court is so unclear. Evidently, Tomuschat's criticism of the judgment proceeds from a more international law-friendly perspective and expresses uneasiness about the possibility that the highest rank of the Constitution in Germany's legal hierarchy as claimed by the Constitutional Court might in practice lead to a violation of the Convention – i.e. an international legal obligation – by the country.

According to the Venice Commission, the overall approach of the German Constitutional Court is not what the Russian Constitutional Court says it has been, following some formulations in the *Görgülü* case.<sup>70</sup> The Commission points out that the German Constitutional Court has not called to life a special procedure to review the constitutionality of judgments of the Strasbourg Court in the same way the Russian Constitutional Court has now done. Moreover, the Commission argues that the main difference between the German *Görgülü* case and the Russian Constitutional Court's judgment of 14 July 2015 is that the German Court decided to rebalance the interests of two private persons, whereas the Russian Court wants to rebalance conflicts between the state and the individual.<sup>71</sup> This distinction is correct, and yet to the extent that the German Court spoke in *Görgülü* of the primacy of the German Constitution, it ultimately remains of secondary importance. If the Constitution is indeed higher than the Convention, then why actually restrict the balancing only to conflicts between two private persons? At the same time, it is true, as the Venice Commission points out, that the Russian Court when doing its comparative work bypasses the principle of international law-friendly interpretation of the Constitution (*Grundsatz der völkerrechtsfreundlichen Auslegung*) which is both characteristic to the

<sup>68</sup> *Ibid.*, *supra* n. 25, para. 62.

<sup>69</sup> See C. Tomuschat, 'Staatsrechtliche Entscheidung für die internationale Offenheit', in J. Isensee and P. Kirchhof (eds.) *Handbuch des Staatsrechts. Dritte Auflage. Band XI, Internationale Bezüge* (C.F. Müller 2013) p. 24.

<sup>70</sup> Interim opinion, *supra* n. 41, para. 88 ff.

<sup>71</sup> Interim opinion, *supra* n. 41, para. 23 ff.

German constitutional law doctrine and also mentioned in the German Court's *Görgülü* case itself.<sup>72</sup> Ironically, in the *Görgülü* case the German Court actually supported the Strasbourg Court vis-à-vis a recalcitrant lower German court. Whatever the statement of the German Court in *Görgülü* was, the Venice Commission emphasises that until now, there has been no decision of the Strasbourg Court which has not been implemented by Germany via its state institutions.<sup>73</sup>

The borrowing from the German *Görgülü* case that the Russian Constitutional Court has done in its 14 July 2015 judgment is an example of smart and skilful legal argumentation by analogy on the Russian side; a somewhat twisted example of comparative constitutional law put into practice. Politically, the Russian argument is: what is allowed to the German Constitutional Court must be allowed to the Russian Constitutional Court as well. *Quod licet Iovi, non licet bovi* cannot be a legitimate principle of European human rights law. *Prima facie*, it is hard to disagree with this logic emphasising equality of the Council of Europe members and their Constitutional Courts; however, with its judgment, the Russian Court allowed itself considerably more than the German Court did in *Görgülü*.

Even seemingly identical constitutional arguments will achieve different results when the actual situation with human rights protection is different. For example, the argument that rights can sometimes be better protected at the national level works more convincingly in countries with strong independent courts, including the Constitutional Court; yet in Russia foreign scholars have observed that the Constitutional Court has lately become more and more subservient towards the Executive.<sup>74</sup>

The other national case that the Russian Constitutional Court referred to was the Italian Constitutional Court's judgment discussing the Strasbourg Court's decision in *Maggio and Others v Italy*<sup>75</sup>, concerning the rights of an Italian citizen who had worked towards his pension in Switzerland:

[the Italian Constitutional Court] is required to assess how and to what extent the application of the Convention by the European Court interacts with the Italian constitutional order. Since a Convention provision effectively supplements Article 117(1) of the Constitution, as an interposed role, it becomes the object of a balancing operation in accordance with the ordinary procedures which the Court is required to follow in all proceedings falling within its jurisdiction (...) The purpose of

<sup>72</sup> See Interim opinion, *supra* n. 41, para. 33; Tomuschat, *supra* n. 69.

<sup>73</sup> Interim opinion, *supra* n. 41, para. 66.

<sup>74</sup> Nußberger 2007, *supra* n. 42, p. 48 ff.

<sup>75</sup> ECtHR 31 May 2011, Case Nos. 46286/09, 52851/08, 54486/08 and 56001/08, *Maggio and Others v Italy*.



such operations is not to assert the primacy of the national legal system, but rather to supplement protection.<sup>76</sup>

The Italian Court then carried out the balancing of rights and provisions and came to a different conclusion than the Strasbourg Court, essentially sending a message to Strasbourg that Italian pensions should be calculated in Rome not in Strasbourg:

... in contrast to the European Court, this Court carries out a systemic and not an isolated assessment of the values affected by the provisions reviewed from time to time, and is therefore required to carry out that balancing operation, which falls to this Court alone ....<sup>77</sup>

Interestingly, the Venice Commission, when commenting on *Maggio*, does not seem to acknowledge that the balancing conducted in the Italian Constitutional Court was no longer between two different private persons but between the interests of the Italian state and the rights of the respective individual (thus undermining the Commission's earlier point on the German *Görgülü* case).<sup>78</sup>

Finally, the UK Supreme Court's judgment that dealt with the aftermath of convicted prisoners' voting rights *inter alia* following the Strasbourg Court's *Hirst v UK* case demonstrates that in certain politically sensitive cases, the UK has not executed judgments of the Strasbourg Court, and a conflict between the Strasbourg Court and the highest national court has remained unsolved.<sup>79</sup> Nor has the Committee of Ministers of the Council of Europe, which is the supervisory body on the enforcement of the judgments of the Strasbourg Court, been able to secure the enforcement of the respective judgments in the UK.

Based on these earlier precedents from western Europe, we cannot thus conclude that the 14 July 2015 judgment of the Russian Constitutional Court is a complete outlier among the Council of Europe countries. This conclusion differs from the interim opinion of the Venice Commission, the analysis of which downplays the fact that the European judgments referred to by the Russian Constitutional Court are certainly different in scale of animosity towards Strasbourg, but their underlying idea – the national constitution as the highest norm – is not different. Although the Russian Court takes clues from previous cases of other Council of Europe member states, it brings the issue much further.

<sup>76</sup> See the Italian Constitutional Court, Judgment No. 264, 2012, *supra* n. 26, para. 4.2.

<sup>77</sup> *Ibid.*, *supra* n. 26, para. 5.4.

<sup>78</sup> Interim opinion, *supra* n. 41, para. 95.

<sup>79</sup> Judgment, R (on the application of Chester) (Appellant) v Secretary of State for Justice (Respondent); McGeoch (AP) (Appellant) v The Lord President of the Council and another (Respondents) (Scotland), 16 October 2013, [2013] UKSC 63, *supra* n. 28.

With this judgment, the Russian Constitutional Court has created a full-scale constitutional doctrine and mechanism for rejecting the enforcement of judgments of the Strasbourg Court that it would interpret as constitutionally incompatible in the Russian context. Now it remains to be seen with what enthusiasm the Russian government will start to test the new mechanism and how far the Russian Constitutional Court will be willing to go with interpreting its new doctrine in practice.

### CONCLUDING OBSERVATIONS

The Venice Commission concluded that the judgment of the Russian Constitutional Court violates Russia's international legal commitments under the Convention.<sup>80</sup> Perhaps this insight is the key to understanding the essence of this judgment of the Russian Court. One substantive difference between Russia on the one hand and countries like Germany or the UK on the other hand is the extent of the compliance problem that the country has developed with the European Convention.<sup>81</sup> Looking at Russia's record in the Council of Europe, both in terms of the nature and quantity of Russia's human rights violations established by the Strasbourg Court, it appears that the European Convention is respected quite selectively and in a rather minimalist way in Russia. As far as the enforcement of the judgments of the Strasbourg Court goes, even when compensation is typically paid to the victim following the judgment of the Strasbourg Court, general measures following from its judgments are quite often not duly implemented. There is a limit to what extent such systemic deficiencies in the enforcement of judgments of the Strasbourg Court can be explained away by technical problems, delays in the political process, etc. The main reason for non-enforcement of judgments of the Strasbourg Court seems to be the lack of political will of the government. Every time a judgment of the Strasbourg Court is not enforced, or properly enforced, in the respective member state of the Council of Europe, we are essentially talking about the violation of the country's international legal obligation, whatever the constitutional perspective of the respective Constitutional Court might be.

It is possible to understand the July 2015 judgment of the Russian Constitutional Court as its response to the compliance problem that Russia has developed over the last decade in the European human rights protection system.

<sup>80</sup> Interim opinion, *supra* n. 41, paras. 99-100.

<sup>81</sup> On compliance, implementation and enforcement in the context of the ECHR, see further A. Seibert-Fohr and M.E. Villiger (eds.), *Judgments of the European Court of Human Rights – Effects and Implementation* (Nomos 2014); C. Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance* (Cambridge University Press 2014).

The Russian Court's judgment is a bid to use the maximum possible margin-of-appreciation doctrine and to have a special regime of sorts for Russia in the context of the Strasbourg Court.

The ball is now in the court of the other Council of Europe member states whose governments and also educated publics must reflect on whether the Russian Constitutional Court can actually claim what it did in 2015; whether this is how they imagined the effect of the judgments of the Strasbourg Court might be. The Russian Constitutional Court may have been right in pointing out that it should not be allowed less rights than, for example, the Constitutional Court in Germany has claimed to itself. However, it would be a problem for the future of the international/European human rights protection regime if one of the weakest performers in the system could dictate the newest common standard. When the Russian Constitutional Court claims extensive constitutional rights vis-à-vis the Strasbourg Court, other Council of Europe member states may also *not* want to comply with its judgments, and the contagion of ignoring judgments of the Strasbourg Court through constitutional brakes and objections would spread further, with the potential of paralysing the Strasbourg Court and the whole Convention system.

At some point the question must be addressed more convincingly than it has been so far of whether the Russian Federation is still willing to comply with the Convention as international human rights law treaty. The Convention does not permit a pick-and-choose policy. Either a state is in and is willing to comply with judgments of the Strasbourg Court, or it does not want to be, in which case it would in the end be more honest to leave from the jurisdiction of the Strasbourg Court. In this context, the July 2015 judgment of the Russian Constitutional Court is a little bit of an attempt to be both in and out at the same time; to have one's cake and still eat it. In the coming years we will find out to what extent other Council of Europe's member states, and in particular the Strasbourg Court itself, are willing to accept such an approach. The Venice Commission has already concluded that the Russian Constitutional Court's judgment and the respective law adopted by the State Duma are violating Russia's obligations under international law. Nevertheless, the Russian Court already decided that it will be constitutionally 'impossible' to enforce the *Anchugov and Gladkov* judgment. The coming years will tell whether other Council of Europe member states will accept a *de facto* special regime for the Russian Federation in the European Convention system and if so, what might be the contagion effects of such a decision.

