



August 12, 2011

President Dmitry Medvedev
President of the Russian Federation
Ilinka Str, No 23
103132, Moscow
Russia

Dear Dmitry Anatoliyevich,

We are writing to express deep concern with regard to the draft legislative proposals that would allow Russia's Constitutional Court to override certain judgements handed down by the European Court of Human Rights. We believe this initiative, if adopted, would impede enforcement of the European Court's rulings in Russia, place Russia in violation of its international legal obligations, and obstruct access to justice for Russian citizens.

The bills, initiated by Alexander Torshin, acting chair of the upper house of parliament, propose amendments to a number of existing laws and was submitted to the State Duma on June 20, 2011.¹ According to the drafts, in cases where the European Court has found that a provision in Russian law is incompatible with, and therefore a violation of, the European Convention on Human Rights (ECHR), the court's judgement would be subject to additional review by the Constitutional Court of Russia. Following such a review, Russia would have to fully implement the European Court decision only if the Constitutional Court found the provision of the Russian law to violate the Russian Constitution. In effect this means that the Constitutional Court could override and block the implementation of the European Court's rulings, both on general and individual measures. The proposed amendments would not affect monetary compensation ordered by the court; these would continue to be paid out.

We have four sets of concerns regarding the draft amendments. First of all, they contravene the basic principles of the ECHR, to which Russia is a party. When introducing the proposed changes, Mr. Torshin emphasized that they are aimed at protecting Russia's sovereignty. But

¹The draft would amend article 415 of the Code of Criminal Procedure, article 312 of the Code of Arbitration Procedure, and articles 43 and 85 of the federal law "On the Constitutional Court of the Russian Federation."

when Russia became a party to the ECHR in 1998, it acknowledged that the convention created binding obligations and agreed to abide by the final judgements of the European Court in cases to which Russia is a party. It is a long-standing principle of international law, and codified in the Vienna Convention on the Law of Treaties in article 27, that a party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform a treaty. The amendments' impact would be to prevent Russia performing some of its obligations under the ECHR.

Secondly, the draft amendments contradict, both in letter and in spirit, article 15, part 4 of the Russian Constitution, which reads: "The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied." Therefore Russia's own constitution bestows supremacy on international treaties over national legislation.

Thirdly, the Russian Constitutional Court has no authority to interpret the European Court's judgements. Article 32 of the European Convention reads: "The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols... In the event of dispute as to whether the Court has jurisdiction, the Court shall decide."

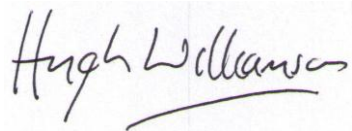
Fourthly, the amendments propose that domestic remedies should be considered exhausted only after either the Supreme Court or the Supreme Arbitration Court of Russia has ruled on the case. However, for the purposes of the European Court, in non-arbitration cases, domestic remedies are considered to be exhausted once cases have been heard by the cassation appeals court. Although the draft amendments have no bearing on implementation of European Court rulings, if adopted they could mislead potential complainants into waiting until their cases are heard by the Supreme Court. This could cause them to miss the deadline for filing a complaint with the European Court, which must be done within six months of the cassation appeal.

Similar concerns to those articulated in this letter have been voiced by a number of individuals and organizations within and beyond Russia.

We were pleased that on July 1, 2011 the Duma suspended consideration of the drafts. However, they are still on the agenda for the autumn parliamentary session. We therefore urge you to make a clear public statement about the inadmissibility of these amendments and restating the importance for Russia to comply with its international legal obligations. We believe such a message should come directly from the Russian President to reassure the Russian public and the international community about the country's continuous commitment to human rights principles and rule of law.

Thank you for your attention to this letter.

Sincerely,



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Executive Director
Europe and Central Asia
Division
Human Rights Watch



Nicola Duckworth
Director
Europe and Central Asia
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Amnesty International



Souhayr Belhassen
President
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