

Russian Constitutional Court Determines Moscow Not Bound to All Human Rights Court Rulings

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Moscow can refuse to comply with judgments handed down by the European Court of Human Rights in certain cases, Russia's Constitutional Court held Tuesday in a landmark decision that could allow the Kremlin to shirk its international obligations.

Specifically, Russian authorities will be exempt from upholding ECHR rulings in cases determined to be incompatible with the country's Constitution, the court held.

Legal and political analysts broadly interpreted the decision as potentially aimed at relieving the Kremlin of its obligation to pay out 1.9 billion euros (\$2.1 billion) to Yukos Oil Company shareholders in accordance with a 2014 ECHR judgment.

Yukos was once Russia's biggest oil company. In 2003, Mikhail Khodorkovsky — Yukos'

owner and the wealthiest man in Russia at the time — was arrested in a case widely disparaged as politically motivated.

Khodorkovsky spent the following decade behind bars, serving sentences in two separate cases, before being pardoned in late 2013 by President Vladimir Putin. The oil tycoon-turned-political opposition leader currently resides in Switzerland.

After Khodorkovsky's arrest, Yukos was broken up and most of its assets were nationalized. Shareholders of the defunct oil company turned to the ECHR, claiming its rights had been violated by the Russian courts.

In July 2014, the ECHR ruled in favor of the former shareholders, holding that Russia had failed to strike a fair balance in its Yukos rulings and ordering Moscow to pay dearly for the indiscretion.

Following Tuesday's decision, the Constitutional Court now has the authority to rule that individual ECHR judgments cannot be executed without violating the Constitution, in which case Russia will not be required to comply.

The presidential administration and the government will both be able to request that the Constitutional Court renders such an assessment in individual cases, according to a statement published on the court's website.

“In exceptional cases, Russia can diverge from fulfilling the obligations imposed upon it if such deviation is the only possible way to avoid violating fundamental constitutional principles,” the court wrote in its ruling, as reported by Interfax.

“The European Convention on Human Rights and the legal positions taken by the [European Court] based on [the convention], cannot undermine [Russia's] Constitution, which takes priority,” the Constitutional Court said in a news release.

The Justice Ministry was quick to read into the implications of the ruling, saying in a statement that Russia would formulate its response to the July 2014 Yukos ruling based on Tuesday's decision.

The court itself denied that the ruling was connected with the Yukos case. Still, Sergei Mavrin, one of the court's judges, said that the Yukos case could eventually be considered, Interfax reported, implying that the decision would apply retroactively.

Russia signed the European Convention on Human Rights in 1996, thereby accepting the ECHR's jurisdiction in the matters dealt with by its text. Russia's own legislation was adjusted in accordance with the convention — notably leading Moscow to impose a moratorium on capital punishment in the country.

Article 46 of the treaty establishes the binding nature of the ECHR's decisions. “The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties,” it reads.

The Constitutional Court justified its decision by referencing similar laws it says have been passed in Germany, Italy, Austria and Britain, and on the basis of the 1969 Vienna Convention

on the Law of Treaties.

It bears noting that Article 27 of the Vienna Convention reads: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

Russian officials and lawmakers have repeatedly accused international courts of issuing politically motivated rulings.

Speaking about the Constitutional Court's decision on Tuesday, senator Alexei Alexandrov, a member of Russia's upper house of parliament, called for a “serious revision of those international treaties, [Russia's] observance of which is inefficient,” as quoted by Interfax.

Kremlin spokesman Dmitry Peskov declined to comment on the court's decision on the basis that “it cannot be appealed,” Interfax reported.

According to Alexander Nadmitov, managing partner at Moscow-based law firm Nadmitov, Ivanov & Partners, the Constitutional Court's decision was reasonable.

“What the court said is that the ECHR is not the sole interpreter of the European Convention, and that in exceptional cases, the Russian Constitution can take precedence over ECHR's rulings,” said Nadmitov in a phone interview. He noted that in his view, the Yukos case should qualify as one such exception.

Alexei Kravtsov, chairman of the Moscow Court of Arbitration, said the Constitutional Court's judgment echoes the general mood of Russian society.

“The court's decision only illustrates the mood among the public and, to an extent, among the elites: Russian people don't want to fulfill the ECHR's decision, including with regard to the Yukos case,” he said in comments to The Moscow Times.

According to Kravtsov, Russia is at a crossroads. On the one hand, it does not wish to execute the ECHR's costly judgments. On the other, it does not wish to sever ties with the Council of Europe, which established the court.

But, Kravtsov said, it is impossible to realize both objectives. “Therefore, the Constitutional Court's decision is the beginning of the end of Russia's ties with the Council of Europe,” he said.

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