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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

RUSSIAN FEDERATION

DRAFT FINAL OPINION

ON THE AMENDMENTS TO THE FEDERAL CONSTITUTIONAL LAW

ON THE CONSTITUTIONAL COURT

On the basis of comments by

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I. Introduction

1. By a letter of 11 December 2015, the First Deputy Chairperson of the Legal Affairs Committee of the Parliamentary Assembly of the Council of Europe conveyed that Committee's decision to request an opinion of the Venice Commission on the "draft legislation pending before the Russian Federation's parliament which would empower the Constitutional Court to determine whether findings by international bodies on protection of human rights and freedoms (including those of the European Court of Human Rights) are to be implemented or not". Such an opinion was to be adopted preferably at the Commission's 106th Plenary Session, in March 2016.

2. Federal Law of the Russian Federation no. 7-KFZ (CDL-REF(2016)006, hereinafter "the 2015 amendments"), introducing amendments to the Federal Constitutional Law no. 1-FKZ of 21 July 1994 on the Constitutional Court of the Russian Federation (CDL-REF(2016)007, hereinafter "the 1994 law")[1] was passed by the State Duma on 4 December 2015, ratified by the Federation Council on 9 December, signed by the President on 14 December and published the following day. The law entered into force on 15 December 2015.

3. On 2 February 2016, the Ministry of Justice of the Russian Federation appealed to the Russian Constitutional Court regarding the possible inability to enforce the judgment of the European Court of Human Rights (hereinafter "the ECtHR") in the case of "Anchugov and Gladkov v. Russia" of 3 July 2013.[2]

4. Having set up a working group composed of Mr Bogdan Aurescu, Mr Sergio Bartole, Mr Iain Cameron, Mr Paul Craig, Mr Wolfgang Hoffmann-Riem and Mr Martin Kuijer, at its 106th Plenary Session (10-11 March 2016) the Venice Commission adopted an interim opinion on the 2015 amendments (CDL-AD(2016)005). As the Russian authorities had been unable to host the working group to discuss the amendments prior to the March session, the opinion was adopted as an interim one and it was agreed that a final opinion would be prepared for the June session.

5. On 19 April 2016, the Constitutional Court of the Russian Federation rendered its judgment in the case "concerning the resolution of the question of the possibility of executing the judgment of the European Court of Human Rights of 4 July 2013 in the case of Anchugov and Gladkov v. Russia in accordance with the Constitution of the Russian Federation in respect to the request of the Ministry of Justice of the Russian Federation" (CDL-REF(2016)033).

6. On 27-28 April 2016, a delegation of the Venice Commission composed of Mr Bogdan Aurescu and Ms Simona Granata-Menghini travelled to Moscow and Saint Petersburg, where it met with representatives of the Ministry of Foreign Affairs, of the Ministry of Justice, of the Constitutional Court and of the Institute of Legislation and Comparative Law. The Venice Commission wishes to thank them for the constructive meetings.

7. The present final opinion was prepared on the basis of the rapporteurs' contributions. It was adopted by the Commission at its … Plenary Session (Venice, …).

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[1] www.ksrf.ru/en/Decision/.../2016_April_19_12-P.pdf

[2] http://hudoc.echr.coe.int/eng#{"appno":["11157/04"],"itemid":["001-122260"]}.

II. Background and general remarks

8. The background information and the general comments relating to the 2015 amendments, as well as the comparison between the competences of the Russian Constitutional Court and those of other European Constitutional Courts are detailed in Chapters II, III, IV and VI of the interim opinion. Chapters V and VII of the interim opinion are considered valid, as modified by the present final opinion.

III. The Judgment of the Constitutional Court of the Russian Federation of 19 April 2016 No. 12- П/2016

9. In its judgment of 19 April 2016, the Russian Constitutional Court examined the question of the possibility of executing the judgment of the European Court of Human Rights of 4 July 2013 in the case of Anchugov and Gladkov v. Russia in accordance with the Constitution of the Russian Federation. The application to the Constitutional Court had been made by the Russian Federation's representative to the European Court of Human Rights (Government Agent) and Deputy Justice Minister, on the ground of the "discovered uncertainty in the question of the possibility to execute" the above judgment.

10. Before the judgment was delivered, an open hearing was held by the Constitutional Court, at which the applicant Mr Anchugov as well as the lawyers representing the other applicant, Mr Gladkov, participated. Both applicants have been released from prison. According to the representatives of the Constitutional Court during the 27-28 April 2016 visit to Russia, the presence of the (representatives of) the applicants was requested by the applicants themselves and it was granted on an *ad hoc* basis, since there is no approved procedure (yet) regarding the handling of cases stemming out from the application of the December 2015 amendments to the Constitutional Law of the Russian Constitutional Court.

11. The Constitutional Court stated at the outset that the Russian constitutional legal order is not subordinate to the European conventional system and, for the sake of the effectiveness of the norms of the European Convention on Human Rights, the European Court of Human Rights should respect the national constitutional identities. The Court nevertheless "recognised the fundamental significance of the European system of protection of human and civil rights and freedoms, judgments of the European Court of Human Rights being part of it" and was "ready to look for a lawful compromise for the sake of maintaining this system, reserving the determination of the degree of its readiness for it, so far as it is the Constitution of the Russian Federation which outlines the bounds of the compromise in this issue". The Constitutional Court, "as the last instance" of resolving the question of the possibility to execute judgments of the ECtHR must find "a reasonable balance in carrying out this power, so that the decision taken by it should on the one hand answer the letter and spirit of the judgment of the ECtHR, and on the other not come into conflict with the fundamental principles of the constitutional order of the Russian Federation and the legal regulation of human and civil rights and freedoms established by the Constitution of the Russian Federation".[3]

12. The Court then proceeded to the analysis of the principles developed by the ECtHR as concerns disenfranchisement of prisoners. It also analysed the constitutional provisions and principles on the recognition and on the possibility of restriction of electoral rights. The Court, on the basis of the previous Soviet/Russian constitutions and of the travaux préparatoires of the current one, stated that the will of the constituent legislator was undoubtedly that all convicted persons "kept in places of deprivation of liberty under a court sentence" be disenfranchised. This made it impossible to interpret Article 32 of the Russian Constitution otherwise. On the other hand, when the European Convention on Human Rights was ratified by Russia, no issue

[3] Constitutional Court of the Russian Federation, judgment No. 12-P/2016 of 19 April 2016, CDL-REF(2016)033, point 1.2, p. 5.

of contradiction between Article 32 and Article 3 of Protocol 1 was raised, which in its view meant that, at that time, the two provisions were compatible. The judgment of the ECtHR in Anchugov and Gladkov suggested an interpretation of Article 3 of Protocol No. 1 which "implicitly contemplat[ed] the alteration of Article 32.3 of the Constitution of the Russian Federation, to which Russia […] gave no consent during […] ratification [of the ECHR]. A contradiction with the Russian Constitution existed not in respect of the European Convention as such, but only in respect of the interpretation thereof given by the ECtHR to the issue of disenfranchisement of prisoners, "which was an evolutive one rather than a well-established one". In the Court's view, there was no consensus among Council of Europe member states on this issue, which consensus was instead necessary for the ECtHR to proceed with an evolutive interpretation.[4]

13. The Court reiterated that there were no grounds to interpret the ban contained in Article 32 as not being absolute and the federal legislator did not have the discretionary power to remove the ban in respect of certain categories of prisoners. The Court considered that it was entitled, as an exceptional case, to disagree (with the ECtHR) but that it was ready to search for a lawful compromise within the limits of what the Russian constitution allows. The Court pledged to adopt a responsible and restrained approach to the solution of the question of the implementation of the judgments of the European Court of Human Rights.[5]

14. The Constitutional Court interpreted Article 32 of the Constitution as meaning "convicted persons isolated from the society in places of deprivation of liberty", from which it ensued that "deprivation of liberty" in that context had to be understood as a "special kind of criminal penalty". Disenfranchisement was imposed only in connection with this special kind of penalty; individuals serving other types of penalty did not lose their voting rights. Deprivation of liberty within that meaning could not be imposed for crimes of small gravity except in the presence of aggravating circumstances. As a consequence, courts, when imposing sentences of deprivation of liberty in colony-settlements or correctional colonies, took into account the effects of disenfranchisement of such sentence. The Constitutional Court therefore disagreed with the finding of the ECtHR that the Russian system of disenfranchisement of convicted prisoners was imposed in an automatic and indiscriminate manner which did not take into account the length of the sentence or the nature and gravity of the offence and was not based on a discretionary law-applying decision establishing a link between the need for disenfranchisement and the circumstances of a specific case. The Court added statistical data to the effect that in 2015 the number of persons sentenced to real deprivation of liberty and thus disenfranchised was significantly smaller than the number of persons sentenced for small crimes and therefore not disenfranchised.[6]

15. The Constitutional Court then addressed the practice of the ECtHR to indicate general measures which the respondent State needs to take in response to the finding of a violation of the ECHR. The Constitutional Court recalled that it is primarily for the State concerned to choose, subject to the supervision of the Committee of Ministers, the means to be used in its domestic legal order for the discharge of its obligations under Article 46 ECHR. In judgments finding a systemic violation of the ECHR, the ECtHR could assist the State in identifying the type of measure that could be taken to resolve the situation; the ECtHR could also indicate one specific measure in cases when the nature of an established violation of the ECHR was such as to limit the choice of measures. In Anchugov and Gladkov, the ECtHR suggested that the Russian Federation execute its decision through some form of political process or by interpreting the Russian Constitution in harmony with the ECHR. The Constitutional Court

[4] Ibidem, point 4.1-4.3, pp. 6-12.

[5] Ibidem, point 4.4, pp. 13-14.

[6] Ibidem, points 5.1-5.3, pp. 14-18.

considered that the interpretation of Article 32 which it offered in this judgment together with the pertinent judicial practice did not present any contradiction with Article 3 of Protocol No. 1.[7]

16. The Constitutional Court nevertheless indicated that the federal legislator had the power "to optimize the system of criminal penalties, including by means of transfer of individual regimes of serving deprivation of liberty to alternative kinds of penalties" and to amend the criminal and criminal-executive legislation so as to transform sentences in colonies-settlements for non-intentional crimes and intentional crimes of small gravity into a separate kind of criminal penalty not involving the deprivation of voting rights.[8]

17. Further, the Constitutional Court expressed the view that the ECtHR ought to have examined the specific circumstances of the cases of Mr Anchugov and Mr Gladkov, and not the Russian legislation *in abstracto*. According to the standards developed by the ECtHR itself, disenfranchisement for serious crimes, that is crimes punishable by 3 or more years of imprisonment, did not violate the principle of proportionality. The two applicants had been sentenced to 15 years of imprisonment in commutation of death sentences, so that their disenfranchisement was not contrary to Article 3 of Protocol No. 1.[9]

18. Finally, the Constitutional Court examined the question whether measures of individual character needed to be taken and stated in the first place that it was impossible to offer *restitutio in integrum* in connection with the past elections during the period 2000-2008. At any rate, reconsideration of the applicants' disenfranchisement was not admissible, given that they had been convicted of particularly grave crimes.[10]

19. In conclusion, the Constitutional Court held: that it was impossible to execute the judgment of the ECtHR in the case of Anchugov and Gladkov in the sense of amending the legislation of the Russian Federation to exclude from disenfranchisement some categories of convicted persons serving a sentence in places of deprivation of liberty; that the execution of that judgment was possible to the extent that it meant ensuring justice, proportionality and differentiation of application of the restriction of electoral rights (as this was already the case under the current criminal system); that the federal legislator was competent to optimize the criminal system including by transferring individual regimes of serving deprivation of liberty to alternative kinds of penalties not entailing disenfranchisement; and that the execution of measures of individual character was impossible.[11]

20. During the visit of 27-28 April 2016, the representatives of the Constitutional Court emphasized that even if the judgment of the Constitutional Court in this case (like in any other case) is compulsory, the reference in it to the competence of the federal legislator to change the criminal legislation is just a suggestion, in other words an option which may be followed or not by the Parliament. Also, the representatives of the Ministry of Justice confirmed that this proposal of the Constitutional Court is just a recommendation and mentioned that it is too early to say if they will initiate (or not) a legislative proposal aimed at changing the criminal legislation, since the Ministry is still assessing the legal implications of the 19 April judgment.

[7] Ibidem, point 5.4, p. 18.

[8] Ibidem, point. 5.5, p. 19.

[9] Ibidem, point 6, p.p. 19-20.

[10] Ibidem, point 7, p. 20.

[11] Ibidem, pp. 21-22.

IV. Analysis of the 2015 amendments in the light of the visit of the Venice Commission delegation and of the Constitutional court's judgment of 19 April 2016.

21. In its interim opinion, the Venice Commission expressed serious concerns as regards the compatibility of the 2015 amendments with the obligations of the Russian Federation under international law, notably Article 46 of the European Convention on Human Rights. The Commission found in particular:

a. that the Constitutional Court ought not to have been given the power of declaring an international decision "non-executable", but only of assessing the compatibility with the Russian constitution of a given modality of enforcement proposed by the Russian authorities, with the exception of a modality indicated specifically by the ECtHR;
b. that the Constitutional Court should not have the power to assess the constitutionality of an individual measure of execution, such as an order to pay just satisfaction;
c. that new Article 104[4] paragraph 2 and Article 106 part 2 of the Federal law on the Constitutional court (providing that following a decision by the Constitutional Court that a judgment of the ECtHR is non-executable, no measures of executions may be taken in the Russian Federation) should be removed since they are in conflict with the obligations stemming from the Vienna Convention on the Law on Treaties and Article 46 ECHR;
d. that all State authorities, including but not limited to the Constitutional Court, were under the obligation to find appropriate measures – including alternative ones (for instance, but not limited to them, to amend the legislative framework, including the Constitution), if a given modality is found to be incompatible with the Constitution - to execute the international decision;
e. Finally, that the original applicants in the proceedings before the European Court of Human Rights need to be involved in the procedure before the Constitutional Court in conditions respecting the equality of arms.

22. The present final opinion proceeds from the analysis carried out in the interim opinion. The following considerations take into account the information gathered during the visit to the Russian Federation and the judgment of 19 April that are relevant for the interpretation of the 2015 amendments. The Venice Commission stresses that it is not competent to address the question of the execution of the judgment of the ECtHR in the case of Anchugov and Gladkov, which is of exclusive competence of the Committee of Ministers of the Council of Europe.

a. The power of the Russian Constitutional Court to declare an international decision '"non–executable"

23. The finding that a whole judgment is non-executable means that *under the Constitution in force* there are no means of executing such judgment. In such a case, there remains only one possibility for the State to respect its international obligation to abide by such judgment: amending the Constitution.

24. It is not very frequent that constitutional amendments are required to remedy a violation or to prevent further violations of the ECHR, but there have indeed been several of these cases, and several respondent States duly initiated a process of constitutional reform which resulted in amendments which were later considered by the Committee of Ministers of the Council of Europe as appropriate measures of general character.[12] These States did so without a judgment of the Constitutional Court declaring the impossibility to find a constitutional manner of execution. The Russian authorities, however, have explained to the Venice Commission that the aim of the 2015 amendments was to remove from the Executive the power to reach such a conclusion: this power, in their view, naturally belongs to the Constitutional Court. For this

[12] Constitutional amendments were carried out as a general measure of execution notably in Greece, Hungary, Italy, Slovak Republic and Turkey, (see at http://www.coe.int/en/web/execution/home).

reason, under the new procedure the Government Agent has been empowered to bring before the Constitutional Court a judgment of the ECtHR containing a "discovered contradiction" with the Constitution, seeking that the Court explore and assess whether or not there exist options of execution.

25. While so far there exists only one example of application of the 2015 amendments so that it is not possible to establish if this would be the practice in the future, the Venice Commission is of the opinion that the Constitutional Court should not be tasked with the identification of all the means of execution of an international judgment. The choice of the best way of enforcing a decision by an international court is a political and administrative matter, not a constitutional one and it is primarily the responsibility of the government. If it were tasked with the whole question of enforcement, the Constitutional Court would risk becoming the political arbiter of all controversies surrounding international decisions. The Constitutional Court can usefully contribute to the execution of international decisions but it can only play the role of a "negative legislator": it cannot actively create new normative acts (on the sub-statutory, statutory or constitutional level) which may be required in the process of execution. As a consequence, a finding of unconstitutionality of a particular modality of execution of a decision of an international court has to be the starting point for the work of other state powers/organs. The Constitutional Court may therefore be asked (only) to assess whether a specific form or modality (measure) of execution raises an issue of constitutionality (such cases should be rather exceptional). Clearly, in the course of this assessment, if there are issues of constitutionality the Court may, when it is possible, indicate an alternative manner of execution which will strike the "lawful compromise" mentioned in the judgment of 19 April 2016.

26. As the Venice Commission has said in its interim opinion, the finding that a whole judgment is "non-executable" is problematic. "Non-executable" in the sense that there is no constitutional manner of execution inevitably points to the only solution that is compatible with the State's international obligations: amending the Constitution (which is obviously not for the Constitutional Court to indicate as a means of execution). As a consequence, the discretionary power of the other State authorities ends up being significantly reduced. The 2015 amendments (new Article 104^4 paragraph 2 and Article 106 part 2 of the Federal law on the Constitutional court) even explicitly and radically rule out – at least in their wording – the possibility of amending the Constitution by providing that no measures of execution may be taken if a judgment is found to be non-executable. This definitive attitude of giving up the execution of the judgment is in breach of the State's international obligations. To the contrary, the finding by the Constitutional Court that a given modality of execution proposed by the Government Agent (or other State authorities) is not constitutionally acceptable does not raise an issue, insofar as the question of execution is then referred back to the other State institutions (the government, the parliament) which are responsible under international law for the enforcement of the judgment (see recommendation below). Thus, the Constitutional Court does not risk entering into a conflict with the international organisation or the international court.

27. In sum, the Venice Commission considers that the question of the execution of an international decision should not be delegated in its entirety to the Constitutional Court; the Commission therefore recommends that the wording of the revised Federal Law on the Constitutional Court be amended to provide that the Government Agent (or other State authority) may seek a decision of the Constitutional Court on the compatibility with the Russian constitution of a specific modality of execution which it intends to take, when it has doubts that such a modality may raise issues of constitutionality.

b. The power of the Constitutional Court to assess the constitutionality of an individual measure of execution, such as an order to pay just satisfaction

28. If it is admissible that the question of the compatibility with the Constitution of an execution measure of general character be brought before the Constitutional Court, the same cannot be said for individual measures, especially in case of orders to pay just satisfaction.

29. The 2015 amendments do not exclude that orders for payment of just satisfaction be brought before the Constitutional Court. It was clear during the visit of 27-28 April 2016 that the Russian authorities do not rule out this possibility in principle; according to them, it depends on the specific case. The Anchugov and Gladkov case did not contain any orders for payment of just satisfaction; hence, this decision does not constitute a useful precedent in this respect. Moreover, even if the ECtHR judgment did not indicate an individual measure, the 19 April judgment of the Constitutional Court concluded that the "execution of the judgment of the European Court of Human Rights of 4 July 2013 … with regard to measures of individual character … is impossible". In its judgment of 19 April, the Constitutional Court indicated that the benchmark for assessing the enforceability of a judgment is "its compatibility with the fundamental principles of the constitutional order of the Russian Federation and the legal regulation of human and civil rights and freedoms established by the Constitution of the Russian Federation".[13]

30. It is very difficult to conceive that an order for payment of a sum of money may be found to be unconstitutional in the light of Chapters 1 and 2 of the Constitution. However, as this may not be totally ruled out, the Venice Commission recommends that the revised Federal Law on the Constitutional Court of the Russian Federation explicitly exclude orders for payment of sums of money (on account of just satisfaction as well as for legal costs) from the competence of that Court.

c. New Article 104^4 paragraph 2 and Article 106 part 2 of the Federal law on the Constitutional Court

31. Pursuant to new Article 104^4 paragraph 2 and Article 106 part 2 of the Federal law on the Constitutional Court, following a decision by the Constitutional Court that a judgment of the ECtHR is non-executable, no measures of executions may be taken in the Russian Federation. As the Venice Commission has stated in its interim opinion, these provisions are in direct conflict with the obligations stemming from the Vienna Convention on the Law on Treaties and from Article 46 ECHR.

32. In its interim opinion, the Venice Commission found that the 2015 amendments presented an "all or nothing" solution (para. 73): "they move from the premise that possible conflicts have to be settled either through refusing the implementation of ECtHR judgments – which is inadmissible – or through declaring that there is no conflict between these judgments and the Russian Constitution, a "black or white alternative". At the 106th Plenary Session, the Russian representatives argued that the Constitutional Court of Russia, if the hurdle to execution could not be lifted, had the possibility of addressing the Federal Assembly for further measures to be taken, and that the Court, in its assessment of the enforceability of a judgment of the European Court of Human Rights, would not take a "black or white" approach but would try to reconcile the constitution and the judgment and to indicate the means to avoid further collisions. Admittedly, in its judgment of 19 April 2016, the Constitutional Court seems to have interpreted new Article 1044 paragraph 2 and Article 106 part 2 in a rather flexible fashion; the Court has

[13] These correspond to Chapters 1 and 2 of the Constitution of the Russian Federation, which, together with Chapter 9 on the constitutional amendment and revision of the constitution, may not be amended by the Federal Assembly. Their amendment requires the decision by a Constituent Assembly to adopt a new constitution (Article 134 of the Constitution).

declared the Anchugov and Gladkov judgment to be non-executable in terms of a non-literal interpretation of Article 32 of the Constitution and of an ensuing legislative reform, and has found that the Russian constitutional order already complies with the criteria for the application of Article 3 of Protocol No. 1 to the ECHR. Yet, the Court has indicated a possible legislative reform which the Federal legislator had the power to initiate and which would have represented a fuller enforcement of the judgment of the ECtHR. The Court therefore, despite its finding of non-enforceability, referred the case to the other State authorities (even if in this respect its recommendation is not binding – see paragraph 20 above). At the same time, the effectiveness of the approach of the Constitutional Court in the application of the December 2015 amendments cannot be assessed properly until after the legislation recommended is adopted (if it is adopted), and also on the basis of the subsequent practice of the Constitutional Court in implementing the December 2015 amendments.

33. While it seems clear that the Constitutional Court has not spared its efforts to avoid a conflict with Strasbourg, which is to be welcomed, the Venice Commission maintains its recommendation to remove new Article 104[4] paragraph 2 and Article 106 part 2 of the Federal law on the Constitutional Court.[14]

d. The obligation of all State authorities, including but not limited to the Constitutional Court, to secure the execution of international decisions

34. The Venice Commission, as it has done in its interim opinion and above, underlines that the execution of an international decision is an obligation incumbent upon the State as a whole, that is, on all State institutions. For this reason, the Venice Commission reiterates its recommendation that the revised Federal Law on the Constitutional Court contain a provision indicating explicitly that, should the Constitutional Court find that a given *modality of execution* (see recommendation above) is incompatible with the Constitution, the question must be referred back to the Executive and other State institutions for further action in order to find alternative ways to execute the international decision, without excluding any possible option to this end.

e. The involvement of the original applicants in the proceedings before the European Court of Human Rights in the procedure before the Constitutional Court in conditions respecting the equality of arms

35. In its interim opinion, the Venice Commission, having noted that the Constitutional Court could decide the case "without holding a hearing", raised the issue of the due protection of the right of the original applicants in the case before the Strasbourg Court to submit their observations on equal conditions as the Russian authorities.

36. In the proceedings relating to the case Anchugov and Gladkov, the Constitutional Court held an open hearing, and both applicants were invited to participate in it. One did so in person, the other through his representatives. The Constitutional Court explained to the Venice Commission delegation that it has the power to call any witnesses and experts it considers necessary.

37. In the light of the above, the Venice Commission does not find that the possibility for the Constitutional Court to decide a case under the 2015 amendments without holding a hearing jeopardises as such the respect for the original applicants' right to submit arguments. However, in the light of the explanations provided by the Constitutional Court (see above paragraph 10), the Venice Commission recommends the inclusion of appropriate rules in the Rules of procedure of the Constitutional Court, to provide for the participation of the original applicants in

[14] During the visit of 27-28 April 2016, the representatives of the Constitutional Court indicated that they see no reason to modify the December 2015 amendments in the sense recommended by the Venice Commission.

the oral hearing, if there is one, or for their right to make written submissions, if no oral hearing is held.

V. Conclusions

38. The Venice Commission wishes to stress at the outset that the execution of the judgments of the European Court of Human Rights is an unequivocal, imperative legal obligation, whose respect is vital for preserving and fostering the community of principles and values of the European continent. The Commission attaches the greatest importance to it.

39. In its interim opinion, the Venice Commission presented background information and general comments that will not be repeated in this opinion. As to the analysis of the 2015 amendments contained in the interim opinion, it remains valid subject to the following new considerations in the light of the information gathered during the visit to the Russian Federation and of the judgment delivered by the Constitutional Court on 19 April 2016 in the case of Anchugov and Gladkov.

40. The 2015 amendments to the Constitutional Law on the Constitutional Court of the Russian Federation have empowered the latter court to declare decisions of international courts, notably of the European Court of Human Rights, as "unenforceable". In the only case which has so far been brought under the 2015 amendments, the Government Agent has referred to the Court the whole international decision, asking it to identify all possible manners of execution and to assess whether any of these is compatible with the Constitution.

41. The Venice Commission is of the opinion that the Constitutional Court should not be tasked with the identification of the manners of execution of an international judgment. The choice of the best way of enforcing a decision by an international court is usually a political/administrative matter, not a constitutional one and it is primarily the responsibility of the government. If it were tasked with the whole question of enforcement, the Constitutional Court would risk becoming the political arbiter of all controversies surrounding international decisions. The Constitutional Court may be asked (only) to assess whether a specific form or modality (measure) of execution raises an issue of constitutionality (such cases should be rather exceptional). While the finding by the Constitutional Court that a whole international decision in non-executable is problematic, the finding by the Constitutional Court that a given modality of execution proposed by the Government Agent (or other State organ) is not constitutionally acceptable does not raise an issue, insofar as the question of execution is then referred back to the other State institutions (the government, the parliament) which are responsible under international law for the enforcement of the judgment.

42. As a consequence, in the Commission's opinion it is crucial that the revised Federal Law on the Constitutional Court provide that, should the Constitutional Court find that a given modality of execution is incompatible with the Constitution, the question must be referred back to the Executive and other State institutions for further action. The provision that no execution measure may be taken if the Constitutional Court finds that a judgment is non-enforceable is in direct conflict with Russia's international obligations under the Vienna Convention on the Law of Treaties and Article 46 ECHR and should be removed.

43. If it is admissible that the question of the compatibility with the Constitution of an execution measure of general character be brought before the Constitutional Court, the same cannot be said for individual measures such as orders to pay just satisfaction.

44. The possibility for the Constitutional Court to examine cases referred to it under this procedure without holding a hearing does not as such jeopardise the original applicant's right to make submissions. However, the Venice Commission recommends the inclusion of appropriate rules in the Rules of procedure of the Constitutional Court, to provide for the participation of the original applicants in the oral hearing, if there is one, or for their right to make written submissions, if no oral hearing is held.

45. The Venice Commission, in order for the 2015 amendments to be compatible with international standards, recommends amending the revised Federal Law on the Constitutional Court as follows:

a. Providing that the Government Agent (or other State organ) may seek a decision of the Constitutional Court only on the compatibility with the Russian Constitution of a specific modality of execution which the Russian authorities intend to take, when they have doubts that such an already identified modality may raise issues of constitutionality; the modalities of execution indicated specifically by the ECtHR in its judgments may not be subject to such procedure;
b. Providing that individual measures, especially orders for payment of just satisfaction, may not be submitted to the Constitutional Court;
c. Removing new Article 104^4 paragraph 2 and Article 106 part 2 of the Federal law on the Constitutional Court;
d. Providing that should the Constitutional Court find that a given modality of execution is incompatible with the Constitution, the question be referred back to the Executive and other State institutions for further action in order to find alternative ways to execute the international decision, without excluding any possible option to this end.

46. The Venice Commission remains at the disposal of the Russian authorities for any further assistance they may wish to receive in this connection.