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Russia to Rule on European Court of Human Rights Decisions

By Peter Hobson

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(From right) Constitutional Court Chief Justice Valery Zorkin, Supreme Court Chief Justice Vyachelav Lebedev and Prosecutor General Yury Chaika.

A new law will allow Russia to disregard rulings imposed on it by the European Court of Human Rights if they conflict with its constitution. Russia has long been irked by the court's rulings — 45,000 Russians appealed to it between 2013 and mid-2015 — but lawyers said the law was passed with one case in mind: Yukos.

The European Court of Human Rights (ECHR) ruled last year that Russia must pay 1.87 billion euros ($2 billion) to former shareholders of Yukos over flaws in the legal process that saw the Russian oil firm bankrupted in the mid-2000s, its owner Mikhail Khodorkovsky jailed for tax evasion, and its assets gobbled up by state-owned companies.

Russia has always maintained that the legal process was sound, and seen payment of the fine as an expensive admission of guilt. A law passed on Dec. 4 by the State Duma offers a way out,

giving the government and President Vladimir Putin the right to refer the Yukos ruling and any other ruling issued under international human rights treaties to the Russian Constitutional Court.

If judges deem a ruling clashes with the Russian Constitution, they will be empowered to overrule — the first time a signatory country to the European Convention on Human Rights has authorized a local court to chose which decisions to enact and which to ignore.

The new law was calculated to avoid fines and minimize reputational damage, said Vsevolod Sazonov, head of law firm Sazonov and Partners. Russia could have refused to enact the ruling or exited the treaty altogether — but that would have damaged Russia's reputation. "Now the Constitutional Court can say 'this contravenes the constitution,' and the government can say they had nothing to do with it," Sazonov said.

Other countries have also abrogated international law or chafed at the ECHR. The United States withdrew from the International Criminal Court in 2002, saying it undermined U.S. judicial authority. Britain has also suggested it could leave the European Convention on Human Rights, which has hampered its efforts to deport foreign criminals.

But lawyers said Russia's move would undermine its credibility in international agreements, particularly after Moscow's annexation of Crimea and shadow war in eastern Ukraine. "Russia is a member of certain treaties at its own convenience," said an American lawyer in Moscow who did not want to be named.

The new law removes a safety check for Russian society, stranding citizens within their own legal system at a time when the state is cracking down on civil society and fostering a rhetoric of "fifth columnists."

Russian authorities have frequently — though not always — been rebuked by the ECHR in cases spanning police brutality, overreach of the security services and violations of rights to free speech and assembly. Russia has paid compensation — usually a few thousand euros — and responded to criticism of legal processes in almost all cases since it joined the court in 1998.

"Russian citizens are being gradually isolated from international legal defenses," said Ilya Shablinsky, a professor at Moscow's Higher School of Economics and member of the Presidential Human Rights Council. The government has been irritated by the stream of rulings against it, he said, and once they have this tool, the Kremlin will likely use it — not just for Yukos.

The result will be increased social tension, according to Sazonov. Those whose rights are abused can either defend their rights peacefully through the legal system or violently, he said.

"This is a bad precedent," said Sazonov. The Russian people use the ECHR, and "most of these decisions are ones that protect our citizens. We are not giving our people the option of contesting our court rulings."

Those rulings have often been seen as politically driven and lawless. This was underlined on Dec. 8 when Russian investigators once again summoned Khodorkovsky to face questions

regarding a murder committed in 1998. The former Yukos owner, who now lives in Western Europe, scoffed at the thought of returning to Russia to face the Russian legal system.

His spokesperson Külli Pispanen said in a statement: "Take part in this farce? They've been playing around with Mr. Khodorkovsky for the last ten years."

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