

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment  
of 26 February 2010 No. 4-II

in the case concerning the review of the constitutionality of Section 2, Article 392 of the Civil Procedure Code of the Russian Federation in connection with complaints of A. A. Doroshok, A. Ye. Kot, and Ye. Yu. Fedotova.

Saint Petersburg, 26 February 2010

The Constitutional Court of the Russian Federation composed of Presiding Judge G. A. Zhilin and Judges Yu. M. Danilov, L. M. Zharkova, V. D. Zorkin, S. M. Kazantsev, M. I. Kleandrov, N. V. Melnikov, N. V. Seleznev, V. G. Strekozov,

in the attendance of I. A. Yashkov, attorney representing A. A. Doroshok; A. V. Kiryanov and Ye. V. Kiryanova, attorneys representing Ye. Yu. Fedotova; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation A. N. Kharitonov; Representative of the Council of the Federation Ye. V. Vinogradova, PhD in Law; Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. V. Krotov,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 3 and 4 of Article 3, Subsection 3, Section 2 of Article 22, Articles 36, 74, 86, 96, 97, and 99 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of Section 2, Article 293 of the Civil Procedure Code of the Russian Federation.

The reason for the consideration of the case is complaints of A. A. Doroshok, A. Ye. Kot, and Ye. Yu. Fedotova.

The ground for the consideration of the case is the discovered uncertainty of whether the provisions of the Civil Procedure Code of the Russian Federation challenged by the applicants are in conformity with the Constitution of the Russian Federation.

Insofar as all the complaints concern essentially the same subject matter and by virtue of Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation is permitted to consider these applications together.

Having heard the report of Judge-Rapporteur L. M. Zharkova, statements by the representatives of the parties, interventions by the following representatives invited to participate in the hearing: Ye. A. Borisenko for the Ministry of Justice of the Russian Federation, T. A. Vasilyeva for the Office of the Prosecutor General of the Russian Federation, and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. Pursuant to Section 1, Article 392 of the Civil Procedure Code of the Russian Federation, court judgments and decisions, decisions by the presidium of the supervisory review court, which are in force, may be reconsidered under newly discovered circumstances.

Section 2 of the said Article includes a list of grounds for reconsideration of the abovementioned judicial decisions under newly discovered circumstances, namely: significant circumstances of the case which were and could be unknown to the applicant (Subsection 1); deliberately false witness testimony, deliberately false expert opinion, deliberately false translation, forgery of evidence, which caused an unlawful or ill-founded court judgment or decision, or decision by the presidium of a supervisory review court, when they are established by the final judgment in a criminal case that entered into legal force (Subsection 2); crimes committed in consideration of or in deciding on the particular case by parties, other persons participating in the case, their representatives, and judges, when they are established by the final judgment in a criminal case that entered into legal force (Subsection 3); annulment of a civil judgment, judgment in a criminal case, decision of a court or decision of the presidium of a supervisory review court, or decision of a public authority or local self-government body, which served as grounds for a judgment, decision of a court or decision of the presidium of a supervisory review court (Subsection 4); recognition of a law applied in a particular case as not conforming to the Constitution of the Russian Federation by the Constitutional Court of the Russian Federation in connection with delivery of a judgment in the case, where the applicant filed a complaint about it with the Constitutional Court of the Russian Federation (Subsection 5).

The applicants in the present case – A. A. Doroshok, A. Ye. Kot and Ye. Yu. Fedotova – seek to recognize Section 2, Article 392 of the Civil Procedure Code of the Russian Federation as not conforming to Articles 1, 2, 15 (Sections 1, 2, and 4), 17 (Section 1), 18, 19 (Section 1), 42, 46 (Sections 1 and 2), 55 (Section 2), 79, and 120 of the Constitution of the Russian Federation, since it does not specify, among other grounds for reconsideration of judicial acts which entered into legal force, a violation of provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms by a court of general jurisdiction in deciding on

particular case, which was established by the European Court of Human Rights, when the applicant had filed the complaint about that violation with the European Court of Human Rights.

1.1. On 27 November 2002, the Oktyabrsky District Court of Tambov granted the claim for indexation of compensatory damages for injury filed by A. Ye. Kot, a person with the second degree of disability who participated in the liquidation of effects of the Chernobyl disaster. The court ordered recovery of the indexed monthly compensation and arrears on it from the Tambov Regional Military Commissioner's Office. On 26 June 2003, the Presidium of the Tambov Regional Court annulled this judgment on supervision, and the case was remanded for a new consideration. Upon the re-consideration, on 7 August 2003, the Oktyabrsky District Court of Tambov granted A. Ye. Kot's claim in part, to a significantly smaller extent than it did before.

The claim for recovery of damages for injury filed by A. A. Doroshok, a person retired from the military service with the third degree of disability resulting from a military injury, was granted by the Military Court of the Rostov-on-Don Garrison on 21 May 2004. The Ministry of Internal Affairs of the Russian Federation as the respondent was obliged to effect a lump-sum compensatory payment and monthly payments subject to indexation. On 22 March 2005, the Presidium of the North-Caucasus Circuit Military Court annulled this judgment on supervision, and in a new decision the claim of A. A. Doroshok was rejected.

In the cases of A. Ye. Kot and A. A. Doroshok, the European Court of Human Rights found violation of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of the Protocol 1 thereto, which occurred due to the annulment of judicial decisions in force in the supervisory review procedure. The Russian Federation was ordered to pay the applicant's pecuniary and non-pecuniary damages (Judgment of 18 January 2007 in the case *Kot v. Russia*; Judgment of 8 January 2009 in the case *Kulkov and Others v. Russia*).

Requests of A. Ye. Kot and A. A. Doroshok to reconsider the supervisory courts' decisions under newly discovered circumstances were dismissed. It was asserted that Article 392 of the Civil Procedure Code of the Russian Federation contains an exhaustive list of grounds for reconsideration and a judgment of the European Court of Human Rights in the applicant's favour was not listed there (decision of the Presidium of the Tambov Regional Court of 3 April 2008; decision of the Presidium of the North-Caucasus Circuit Military Court of 28 April 2009). Moreover, the Tambov Regional Court pointed out that pursuant to Article 393 of the Civil Procedure Code of the Russian Federation a decision of the presidium of a supervisory court may be reviewed under newly discovered circumstances if such decision alters the decision of a trial court or if a new decision is adopted, while in the case of A. Ye. Kot the decision of the trial

court was annulled and the case was remanded for a new consideration, which resulted in partial ruling in favor of the applicant's claim.

The Taganrog City Court of the Rostov Region dismissed the claim of Ye. Yu. Fedotova to recover her property from the other persons' unlawful possession on 16 October 2000. The European Court of Human Rights found, in *Fedotova v. Russia* (Judgment of 13 April 2006), that Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms had been violated in the applicant's case. It was noted that the court which considered her application could not be regarded as a tribunal established by law. Non-pecuniary damages were awarded to Ye. Yu. Fedotova.

The Ye. Yu. Fedotova application on reconsideration of the judgment of the Taganrog City Court of the Rostov Region of 16 October 2000 under newly discovered circumstances was rejected by the same court on 5 December 2006. The court held that violation of the procedural legislation norms established by the European Court of Human Rights serves as a ground for application to a supervisory review court. The Judicial Section on Civil Cases of the Rostov Regional Court upheld this decision and noted, in its decision of 31 January 2007, that it is impossible to use the statutory analogy (Section 4, Article 1, Civil Procedure Code of the Russian Federation, and Section 7, Article 311, Arbitration Procedure Code of the Russian Federation), because Article 392 of the Civil Procedure Code of the Russian Federation determines in an exhaustive manner the list of grounds for reconsideration of judicial decisions under newly discovered circumstances.

1.2. As follows from Articles 74, 96, and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation decides only on the subject-matter specified in the citizen's complaint and only in relation to the contested statutory provisions affecting the rights and freedoms of the applicant, where these provisions were applied or are to be applied in his case. In making a decision, the Constitutional Court of the Russian Federation considers not only the literal meaning of the normative acts under review, but also the meaning these norms acquire from official and other interpretations or in law-enforcement practices and considering their place within the hierarchy of legal acts.

A. Ye. Kot challenges the conformity to the Constitution of the Russian Federation of Section 2, Article 392 of the Civil Procedure Code of the Russian Federation taken together with its Article 393. This Article determines the jurisdiction for cases on reconsideration of judicial acts which have entered into legal force, under newly discovered circumstances. It is aimed to implement the provisions of Articles 46 (Section 1), and 47 (Section 1) of the Constitution of the

Russian Federation, and therefore, in spite of the applicant's allegations, may not be regarded as violating the right to judicial protection or the right to fair trial as set out therein.

Therefore, the complaint of A. Ye. Kot meets the admissibility criteria as defined by the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" only insofar as it relates to challenging the conformity of Section 2, Article 392 of the Civil Procedure Code of the Russian Federation. Admissible to the same extent is the complaint of Ye. Yu. Fedotova, who challenges in general the constitutionality of Chapter 42 of the Civil Procedure Code of the Russian Federation, "Reconsideration, under newly discovered circumstances, of judgments, judicial decisions, decisions of the presidium of the supervisory review court that entered into legal force", since the submitted materials prove only that Section 2 of Article 392 was applied in her case.

Thus, in the present case, Section 2, Article 392, Civil Procedure Code of the Russian Federation, is subject to review by the Constitutional Court of the Russian Federation insofar as it is the ground for denial of reconsideration under newly discovered circumstances of a judicial decision that entered into legal force in cases where the European Court of Human Rights finds a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms provisions. In these cases a violation is made by a court of general jurisdiction in considering a particular dispute resolved by this decision and where this violation became the reason for filing a complaint of the applicant with the European Court of Human Rights.

2. Pursuant to Article 46 (Section 3) of the Constitution of the Russian Federation, everyone, in accordance with international treaties of the Russian Federation, shall have the right to address international bodies for the protection of human rights and freedoms if all available domestic remedies have been exhausted. This right is recognized and guaranteed in the Russian Federation pursuant to the Constitution of the Russian Federation and in accordance with generally recognized principles and norms of international law that shall be, along with international treaties of the Russian Federation, an integral part of its legal system (Section 4, Article 15, and Section 1, Article 17 of the Constitution of the Russian Federation).

Having ratified the Convention for the Protection of Human Rights and Fundamental Freedoms, the Russian Federation recognized *ipso facto* and without any special agreement the compulsory jurisdiction of the European Court of Human Rights in all matters concerning the interpretation and application of the Convention and Protocols thereto in cases of their alleged breach by the Russian Federation (Article 1, Federal Law No. 54-Φ3, "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols Thereto", of 30 March 1998).

Therefore, as the Constitutional Court of the Russian Federation held in its Judgment No. 2-II of 5 February 2007 that it is not only the Convention for the Protection of Human Rights and Fundamental Freedoms that forms a constituent integral part of the Russian legal system, but also judgments of the European Court of Human Rights to the extent that they interpret rights and freedoms set forth in the Convention relying on the generally recognized principles and norms of international law, including the right to access to court and right to a fair trial. Therefore they should be taken into account by the federal legislator in regulating social relations and by law-enforcement authorities in applying the relevant legal norms.

2.1. The binding nature of judgments of the European Court of Human Rights for the Russian Federation is also derived from Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It provides that the States that have ratified the Convention agree to abide by the final judgments of the European Court of Human Rights in cases to which they are parties.

In its Judgment of 15 January 2009 in the case *Burdov v. Russia (No. 2)*, the European Court of Human Rights recalling its established opinion concluded that Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms imposes on the respondent State a legal obligation not only to effect payments to persons concerned as a just satisfaction awarded on account of the violation found by the European Court of Human Rights, but to take general and, if appropriate, individual measures to put an end to the violation in the domestic enforcement practice and to redress its effects as far as possible. Such measures are to be taken, too, in respect of other persons in a position comparable to that of an applicant whose right the European Court of Human Rights found to be violated.

In the opinion of the European Court of Human Rights, it is for the respondent State to choose means by which the legal obligation following from Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms will be discharged within the domestic legal system. The condition imposed is that such means shall be compatible with the conclusions set out in the relevant judgment of the European Court of Human Rights. Save for cases where errors allegedly made by domestic courts in facts and in law could violate the rights and freedoms protected by the Convention, it is for the domestic authorities, namely judicial bodies, to decide on interpretation and application of the national legislation (*Scozzari and Giunta v. Italy* Judgment of 13 June 2000; *Jahn and Others v. Germany* Judgment of 30 June 2005; *Scordino v. Italy (No. 1)* Judgment of 29 March 2006, *Musayeva v. Russia* Judgment of 3 July 2008; *Ruslan Umarov v. Russia* Judgment of 3 July 2008 *et al.*).

In its Recommendation R (2000) 2 of 19 January 2000, “On the Re-Examination or Reopening of Certain Cases at Domestic Level Following Judgments of the European Court of

Human Rights”, the Committee of Ministers of the Council of Europe, which exercises control over implementation of judgments of the European Court of Human Rights, notes the obligation of the respondent State to take measures which ensure as far as possible restoration of the situation the person enjoyed prior to the violation of the Convention for the Protection of Human Rights and Fundamental Freedoms by the State (*restitutio in integrum*). This includes an obligation to ensure that the domestic legal system has adequate possibilities of re-examining the case, including reopening of proceedings, in instances where a violation took place.

This discretion regarding the means of implementing judgments of the European Court of Human Rights reflects the freedom of choice inherent to the fundamental obligation of the Contracting Parties to secure the rights and freedoms defined in the Convention, as derived from Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

2.2. As follows from Articles 1 (Section 1), 2, 15 (Section 2), 17 (Section 2), 18, 45 (Section 1), 46 (Sections 1 and 2), 52, 53, 55, and 118 of the Constitution of the Russian Federation, protection of the rights and freedoms of man and citizen as guaranteed therein and being the duty of the State may not be recognized effective once the judicial act or any other act of a competent authority delivered for purposes of restitution the violated rights remains without enforcement. This includes judicial protection, a right which belongs to the fundamental inalienable human rights and freedoms and at the same time is a guarantee for all other rights and freedoms.

This conclusion corresponds to Section 1, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and to its application practice by the European Court of Human Rights, which has repeatedly noted that enforcement of any judicial decision should be considered as an essential element of a fair trial. Otherwise, if a domestic legal system allowed a final binding judicial decision to remain inoperative, the “right to a court” would be illusory (*Hornsby v. Greece* Judgment of 19 March 1997, *Ryabykh v. Russia* Judgment of 24 July 2003).

Taking into account distinctive features of powers of the European Court of Human Rights, which functions on the basis of the subsidiarity principle, and considering the specificity of cases before it, not every decision of the European Court imposing an obligation to pay due monetary compensation on a respondent State provides for full restoration of the violated right. The European Court of Human Rights only finds a violation of provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, but it has no power to take further measures to rectify it, specifically in cases where a discovered violation has a continuous nature or was caused by grave violation of procedural laws by a domestic court. In such cases effective restoration of a violated right may be hindered by a domestic judicial act that entered into legal

force, which became the reason for the applicant's complaint to the European Court of Human Rights, but is binding and has to be enforced on the territory of the respective State.

Since a domestic judicial act is not subject to reconsideration within a system of international jurisdiction, a State which undertook to execute final judgments of the European Court of Human Rights, including those which find violations of the Convention for the Protection of Human Rights and Fundamental Freedoms and require annulment of domestic judicial acts in order to rectify such violations, shall introduce a mechanism for restoration of interested persons' rights in domestic legislation. This conclusion concerns cases where rights cannot be restored by awarding a monetary compensation only.

In any event a person upon whose application a judgment of the European Court of Human Rights was delivered should have an opportunity to apply to a competent court with a request to reconsider judicial acts in his case and to be certain that his request will be examined. Any other interpretation would evidence the derogation and limitation of everyone's right to judicial protection implying specific guarantees, which allow to exercise its full scope and provide for effective restoration of rights through administration of justice complying with the requirements of justice (Judgments of the Constitutional Court of the Russian Federation No. 4-II of 2 February 1996, No. 5-II of 3 February 1998, No. 9-II of 16 March 1998, No. 17-II of 25 December 2001, No. 14-II of 26 December 2005 et al.)

3. The Constitution of the Russian Federation guarantees everyone's right to judicial protection including the right to appeal judicial acts to higher courts, but it does not immediately provide for order and procedure of review and reconsideration upon requests of the interested persons.

The necessary legal framework is put in place by the federal legislator on the basis of the Constitution of the Russian Federation. The federal legislator has broad discretion in establishing the system and competences of judicial instances, sequence and procedure for appeals and grounds for annulment of judicial acts upon examination by a competent judicial instance. However, this discretion is limited by the constitutional aims and values and generally recognized principles and norms of international law and international obligations of the Russian Federation.

3.1. For the purpose of protection of violated rights and rectification of errors made by courts of general jurisdiction in civil cases, the Civil Procedure Code of the Russian Federation provides for proceedings in a second instance court for review of judgments and decisions of justices of the peace, which have not yet entered into legal force (appellate proceeding), and other judgments delivered in the first instance (cassation proceeding), as well as for proceeding

for review of judicial decisions which have entered into legal force, namely, supervisory review or reconsideration under newly discovered circumstances.

Pursuant to Chapter 41 of the Civil Procedure Code of the Russian Federation, providing for the court procedure of supervisory review, a judicial decision which entered into legal force may be appealed to a supervisory review court by the parties to the case, other persons, whose rights and legitimate interests were infringed by this judicial decision, and by a prosecutor within six months after the day of entry into legal force, provided that all regular (ordinary) remedies were exhausted. Reconsideration of judicial decisions under newly discovered circumstances is carried out under the rules set out by Chapter 42 of the Civil Procedure Code of the Russian Federation by the court which delivered the contested judicial decision. The request for reconsideration of the case shall be filed by a party to the proceedings within three months upon establishing the grounds for reconsideration listed in Section 2, Article 392 of the Civil Procedure Code of the Russian Federation.

Considering that appellate and cassation proceedings in civil matters are aimed to re-examine only judicial decisions which have not yet entered into legal force, and that it is virtually impossible to challenge judicial decisions which have entered into force before the European Court of Human Rights within the time-limit set for filing a supervisory review complaint, the persons whose rights the European Court of Human Rights found to be violated, apply to courts of general jurisdiction with requests to reconsider the judicial decisions under newly discovered circumstances. However, lack of relevant grounds in Section 2, Article 392 of the Civil Procedure Code of the Russian Federation leads, in the judicial practice, to denial of such requests (as was the case for the applicants in the present proceedings). And, consequently, counter to the provisions of Article 15 (Section 4) of the Constitution of the Russian Federation stipulating that if an international treaty of the Russian Federation establishes rules other than provided for by law, the rules of the international treaty shall be applied, the effect of the Convention for the Protection of Human Rights and Fundamental Freedoms on the territory of the Russian Federation is hindered.

3.2. It follows from the principle of equality under law as applied to the exercise of the right to judicial protection (Sections 1 and 2, Article 19; Section 1, Article 46; Section 3, Article 123 of the Constitution of the Russian Federation) that relations which are similar in their legal nature should be regulated in a similar manner (Judgment of the Constitutional Court of the Russian Federation No. 6-II of 25 March 2008). Observance of the constitutional principle of equality, which guarantees protection against all forms of discrimination in the exercise of rights and freedoms, implies *inter alia* a prohibition to impose such discriminatory restriction on the rights of persons who belong to the same group without reasonable and objective justification

(prohibition to treat differently persons in the same or similar situations). Any differentiation leading to disparity of citizens' rights in a certain area of legal regulation should comply with the requirements set by the Constitution of the Russian Federation, namely that such differentiation is permissible if objectively justified, reasonable, and pursues constitutionally significant aims, while proportionate legal means are employed to achieve these aims (Judgments of the Constitutional Court of the Russian Federation No. 8-II of 24 May 2001, No. 11-II of 3 June 2004, No. 6-II of 15 June 2006, and No. 5-II of 5 April 2007).

Within the meaning of Article 118 (Section 2) of the Constitution of the Russian Federation, which proclaims that judicial power shall be exercised by means of constitutional, civil, administrative and criminal proceedings, taken together with its Articles 126 and 127, civil proceedings through which courts of general jurisdiction and arbitration courts exercise judicial power should be similar for these courts in their principles and basic features.

Within the arbitration proceedings (in compliance with international obligations of the Russian Federation) it is provided that a violation of provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms by an arbitration court in a particular case, if the applicant filed a complaint about it with the European Court of Human Rights and a violation was found, is one of the grounds for reconsideration (Section 7, Article 311 of the Arbitration Procedure Code of the Russian Federation).

As to the Civil Procedure Code of the Russian Federation, its Section 2, Article 392 (both in the initial wording and as amended by Federal Law No. 330-Φ3 of 4 December 2007) does not explicitly provide that a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms committed by a court of general jurisdiction in a particular case and found by the European Court of Human Rights can be one of the grounds for reconsideration under newly discovered circumstances of judicial decisions which entered into legal force. At the same time, the other grounds specified in the Article are identical to those set out in the Arbitration Procedure Code of the Russian Federation.

3.3. Specific characteristics of cases considered by courts of general jurisdiction may not justify a different level of guarantees for the protection of citizens' rights when deciding upon the list of grounds for reconsideration of judicial acts under newly discovered circumstances if a judgment of the European Court of Human Rights finds a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms. In such situations, the interested persons should not be precluded from lodging a relevant request to a court of general jurisdiction. While considering such requests, courts must rely on Section 4, Article 1 of the Civil Procedure Code of the Russian Federation, which prescribes that, in the absence of a specific procedural norm regulating certain relations within civil proceedings, a norm regulating

similar relations shall be applied (analogy of laws), and in the absence of such norm a court shall act on the basis of administration of justice principles in the Russian Federation (analogy of law). Accordingly, courts of general jurisdiction shall rely on both Section 7, Article 311 of the Arbitration Procedure Code of the Russian Federation, and Subsection 5, Section 2, Article 392 of the Civil Procedure Code of the Russian Federation in order to secure the restoration of the violated rights as far as possible within the light of the facts and circumstances of a particular case and nature of relations under dispute.

The rights and freedoms of man and citizen recognized by the Convention for the Protection of Human Rights and Fundamental Freedoms are essentially the same rights and freedoms as provided by the Constitution of the Russian Federation. Due to the common nature of the legal status and purpose of the European Court of Human Rights and the Constitutional Court of the Russian Federation, a possibility to use a uniform institutional mechanism of enforcement for their decisions is implied, especially if one considers the purpose of full restoration of violated rights. Therefore, in line with the requirements of the Constitution of the Russian Federation and the Convention for the Protection of Human Rights and Fundamental Freedoms, the provisions of Article 392 of the Civil Procedure Code of the Russian Federation shall be placed within the context of effective legal regulation based on consistent normative unity and shall be interpreted in the light of legal opinions of the Constitutional Court on legal effects of its judgments. It should be taken into account, *inter alia*, that Subsection 5, Section 2 of said Article lists, among the newly discovered circumstances, recognition by the Constitutional Court of the Russian Federation, of a law applied in a particular case as not conforming to the Constitution of the Russian Federation where the applicant filed a complaint with the Constitutional Court of the Russian Federation. This position has been asserted in a number of decisions of the Constitutional Court of the Russian Federation (No. 78-O of 5 February 2004; No. 135-O of 12 May 2006; No. 827-O-II of 1 November 2007; No. 556-O-II of 11 November 2008 et al.) and reaffirmed in Judgment No. 1-II of 21 January 2010.

3.4. Addressing the issue of grounds and mechanisms for reconsideration of a trial court's and arbitration court's decisions upon the applicants' complaints where the contested norm was applied in an unconstitutional interpretation, and it resulted in violation of the constitutional rights and freedoms, the Constitutional Court of the Russian Federation reached the following conclusions.

The legal force of a judgment by the Constitutional Court of the Russian Federation implies that it is impossible for a norm to acquire any other meaning than the constitutional meaning established by this decision. Consequently, this norm loses its force for the future in any sense which previously existed but diverges from the one uncovered through constitutional

interpretation. Thus, according to the general rule once the judgment of the Constitutional Court of the Russian Federation enters into force a norm should not be interpreted in any other way or applied in any other manner. Therefore a judgment establishing the constitutional meaning of the norm has a legal effect as provided by Section 2, Article 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, which guarantees reconsideration of an applicant’s case by a competent authority in an ordinary manner.

A judgment of the Constitutional Court of the Russian Federation which establishes the constitutional meaning of a norm and prevents its application in unconstitutional interpretation, has a retroactive effect for an applicant who filed a complaint with the Constitutional Court of the Russian Federation. Hence, it entails for him the same effect as a judgment recognizing the norm as not conforming to the Constitution of the Russian Federation. The cases of such applicants are in any event subject to reconsideration by competent authorities in spite of expiration of limitation periods for addressing these authorities and regardless of whether the relevant grounds for reconsideration are provided elsewhere other than in the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

The Civil Procedure Code of the Russian Federation does not expressly provide for such ground of reconsideration of a case as establishing the constitutional meaning of a norm by the Constitutional Court of the Russian Federation, which has not been previously attributed to it in law-enforcement practice. Lack of this specific ground may not be a reason for denial of reconsideration of judicial decisions where a violation of constitutional rights and freedoms has been established by the supreme judicial instance, which does not belong to either a system of courts of general jurisdiction or arbitration courts, that is the Constitutional Court of the Russian Federation by virtue of its competence derived from Articles 46 and 125 of the Constitution of the Russian Federation and the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”. Otherwise it would lead to the impossibility to execute a judgment delivered by the Constitutional Court of the Russian Federation and would hence deprive of purpose any complaint of applicants to the Constitutional Court of the Russian Federation. Thus protection of the rights of citizens and their associations by means of constitutional review would become illusory.

The mentioned legal opinions of the Constitutional Court of the Russian Federation are generally applicable considering the guarantees of judicial protection of rights and freedoms as defined in Articles 2, 15 (Section 4), 17, 18, 45, and 46 of the Constitution of the Russian Federation. Equally, they are applicable in relation to the enforcement of judgments delivered by the European Court of Human Rights.

Denial of respective procedural opportunities to persons whose rights under the Convention for the Protection of Human Rights and Fundamental Freedoms were violated by courts of general jurisdiction, as established by the European Court of Human Rights, and analogous to violations of constitutional rights, would result in substantial limitation of the right to judicial protection. This would contradict the constitutional principles of equality, precedence of international treaties of the Russian Federation within its legal system, and the constitutional purposes of civil proceedings. In turn, this would preclude recognition of court proceedings as an effective remedy for violated rights.

3.5. Thus, within its constitutional meaning and place within the system of effective legal norms, *inter alia* those establishing precedence of rules of an international treaty of the Russian Federation (Section 4, Article 15 of the Constitution of the Russian Federation), Section 2, Article 392 of the Civil Procedure Code of the Russian Federation may not be regarded as allowing a court of general jurisdiction to deny reconsideration of a decision under newly discovered circumstances upon the citizen's request if the European Court of Human Rights established a violation of provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms by a decision in question, if that decision served as grounds for applying to the European Court of Human Rights. So, it is the competent court which decides on the possibility to reconsider a judicial decision relying on full and comprehensive examination of the applicant's arguments and circumstances of the case.

Any other interpretation of Section 2, Article 392 of the Civil Procedure Code of the Russian Federation in law-enforcement practice would contradict the general legal principles of equality and justice, Articles 15 (Sections 1, 2, and 4), 17 (Sections 1 and 2), 18, 19 (Sections 1 and 2), 46, 118 (Section 2), and 120 of the Constitution of the Russian Federation, as well as Convention for the Protection of Human Rights and Fundamental Freedoms.

At the same time it should be taken into account that the existence of a certain procedure for reconsideration of judicial decisions which have entered into legal force, if violations of the Convention for the Protection of Human Rights and Fundamental Freedoms were established, is a general measure for purposes of implementing the Convention. Taking general measures is an obligation of the State under Article 46 of the Convention together with Articles 19, 46, and 118 of the Constitution of the Russian Federation. Hence, there is a need to establish a statutory mechanism of executing final judgments delivered by the European Court of Human Rights, which would allow securing the adequate restoration of rights found to be violated.

Therefore, for purposes of uniform and proper legal regulation and being guided by the Constitution of the Russian Federation and legal opinions expressed by the Constitutional Court of the Russian Federation, *inter alia* in this Judgment, the federal legislator must introduce

amendments to the Civil Procedure Code of the Russian Federation. These amendments shall guarantee an opportunity to reconsider judicial decisions which have entered into legal force, if the European Court of Human Rights finds a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms by a court of general jurisdiction delivering a judgment in the case where this judgment was the reason for application to the European Court of Human Rights.

Concluding from the above and by virtue of Article 6, Sections 1 and 2, Article 71, Articles 72, 74, 75, 79, and 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize Section 2, Article 392 of the Civil Procedure Code of the Russian Federation as conforming to the Constitution of the Russian Federation. The mentioned provision conforms to the Constitution as long as Section 2, Article 392 of the Civil Procedure Code of the Russian Federation within its constitutional meaning and place within the system of effective legal norms, *inter alia* those establishing precedence of rules of an international treaty of the Russian Federation (Section 4, Article 15 of the Constitution of the Russian Federation), may not be regarded as allowing the court of general jurisdiction to deny reconsideration of a decision under newly discovered circumstances upon the citizen’s request, if the European Court of Human Rights has established a violation of provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms by a decision in question and if that decision served as grounds for application to the European Court of Human Rights.

2. The constitutional meaning of Section 2, Article 392 of the Civil Procedure Code of the Russian Federation as established by this Judgment shall be generally binding and shall preclude any other interpretation in the law-enforcement practice.

3. The lawsuits of A. A. Doroshok, A. Ye. Kot and Ye. Yu. Fedotova decided on the basis of Article 392 of the Civil Procedure Code of the Russian Federation as interpreted in the manner diverging from its constitutional meaning established by this Judgment, are to be reconsidered by courts in the ordinary manner.

4. This Judgment shall be final and shall not be subject to any appeal; it shall come into force immediately upon pronouncement, and shall be directly applicable without need for confirmation by other authorities or state officials.

5. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be published in *Rossiyskaya Gazeta* and the

Collection of Legislation of the Russian Federation. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court  
of the Russian Federation

No. 4-П