

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 21 January 2010 No. 1-II

in the case concerning the review of the constitutionality of the provisions of Section 4, Article 170, Section 1, Article 311, and Section 1, Article 312 of the Arbitration Procedure Code of the Russian Federation, in connection with complaints of the Proizvodstvennoye Obyedineniye “Bereg” CJSC, Karbolit OJSC, Zavod “Mikroprovod” OJSC, and Nauchno-Proizvodstvennoye Predpriyatiye “Respirator” OJSC.

Saint Petersburg, 21 January 2010

The Constitutional Court of the Russian Federation composed of President V. D. Zorkin and Judges N. S. Bondar, G. A. Gadzhiev, Yu. M. Danilov, L. M. Zharkova, G. A. Zhilin, S. M. Kazantsev, M. I. Kleandrov, S. D. Knyazev, L. O. Krasavchikova, S. P. Mavrin, N. V. Melnikov, Yu. D. Rudkin, N. V. Seleznev, A. Ya. Sliva, V. G. Strekozov, O. S. Khokhryakova, V. G. Yaroslavtsev,

in the attendance of attorney T. A. Kamenskaya, representative of the Nauchno-Proizvodstvennoye Predpriyatiye “Respirator” OJSC and Zavod “Mikroprovod” OJSC; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation A. N. Kharitonov; Representative of the Council of the Federation to the Constitutional Court of the Russian 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, Article 3, Section 1, Article 21, 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 the provisions of Section 4, Article 170, Section 1, Article 311, and Section 1, Article 312 of the Arbitration Procedure Code of the Russian Federation.

The reason for the consideration of the case is complaints of the Proizvodstvennoye Obyedineniye “Bereg” CJSC, Karbolit OJSC, Zavod “Mikroprovod” OJSC, and Nauchno-Proizvodstvennoye Predpriyatiye “Respirator” OJSC.

The ground for the consideration of the case is the discovered uncertainty of whether the provisions of the Arbitration 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 G. A. Zhilin, statements by the parties, interventions by Deputy President of the Supreme Arbitration Court of the Russian Federation V. L. Slesarev for the Supreme Arbitration Court of the Russian Federation, T. A. Vasilyeva for the Prosecutor General of the Russian Federation, E. A. Borisenko for the Ministry of Justice 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. The Arbitration Procedure Code of the Russian Federation defines grounds for reconsideration of judicial acts under newly discovered circumstances as certain significant circumstances of the case which were not and could not have been known by the applicant (Section 1, Article 311). It provides further that a request for reconsideration under newly discovered circumstances of a judicial act which has entered into legal force shall be filed by the parties to the case with the arbitration court which has delivered such judicial act within three months starting from the discovery of the circumstances serving as the ground for reconsideration of the judicial act (Section 1, Article 312).

The specified provisions were applied by the arbitration courts in the cases of the applicants in the present proceedings (Proizvodstvennoye Obyedineniye “Bereg” CJSC, Karbolit OJSC, Zavod “Mikroprovod” OJSC, and Nauchno-Proizvodstvennoye Predpriyatiye “Respirator” OJSC) in the interpretation given by Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008. This Decree amended Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 17 of 12 March 2007, “On Application of the Arbitration Procedure Code of the Russian Federation in Reconsideration, Under Newly Discovered Circumstances, of Judicial Acts Which Have Entered Into Legal Force”, and introduced Section 5.1 in the latter. According to the clarification in that

Section, the judicial act challenged by the applicant in supervisory proceedings may be reconsidered under newly discovered circumstances pursuant to Section 1, Article 311 of the Arbitration Procedure Code of the Russian Federation, provided that such judicial act was based on statutory provisions for which the enforcement practice was established by the Supreme Arbitration Court of the Russian Federation after the delivery of that judicial act in a Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation or decision of the Presidium of the Supreme Arbitration Court of the Russian Federation, even if such decision was delivered in supervisory proceedings in some other case. Once these circumstances are established in consideration of the supervisory review complaint, the judicial section of the Supreme Arbitration Court of the Russian Federation delivers a decision to deny transfer of the case to the Presidium of the Supreme Arbitration Court of the Russian Federation pursuant to Section 8, Article 299 of the Arbitration Procedure Code of the Russian Federation, and points out the possibility to reconsider the challenged judicial act under newly discovered circumstances. The limitation period provided by Section 1, Article 312 of the Arbitration Procedure Code of the Russian Federation is calculated from the date a copy of the decision on denial to transfer the case to the Presidium of the Supreme Arbitration Court of the Russian Federation is served on the applicant. When the judicial act is based on legislative provisions for which the enforcement practice was established by the Supreme Arbitration Court of the Russian Federation after the delivery of that judicial act, and such judicial act is challenged in appellate or cassation proceedings, the respective appellate or cassation court shall take into account the clarification of the Supreme Arbitration Court of the Russian Federation in assessing the grounds for amendment or annulment of the challenged judicial act.

1.1. The Supreme Arbitration Court of the Russian Federation denied transfer to the Presidium of the Supreme Arbitration Court of the Russian Federation for supervisory review of the judicial acts which granted, in 2006–2007, the claims of the Nauchno-Proizvodstvennoye Predpriyatiye “Respirator” OJSC, Karbolit OJSC, Proizvodstvennoye Obyedineniye “Bereg” OJSC, and Zavod “Mikroprovod” OJSC seeking recovery of unjustified enrichment received by the “Mosenergosbyt” OJSC in settlements for consumed electricity. In Decisions No. 3497/08 of 28 March 2008, No. 3969/08, No. 3884/08 and No. 618/08 of 9 April 2008, respectively, the Supreme Arbitration Court of the Russian Federation reasoned that the enforcement practice of the statutory provisions which served as the basis for the judicial acts was altered by Decision of the Supreme Arbitration Court of the Russian Federation No. 16260/06 of 29 May 2007. Accordingly, the “Mosenergosbyt” OJSC had a possibility to file requests for their reconsideration under newly discovered circumstances within three months from date when copies of the respective decisions were served on it. The arbitration courts granted those requests

of the “Mosenergosbyt” OJSC, and in the new consideration of the cases rejected the applicants’ claims for recovery of unjustified enrichment.

The applicants challenge the constitutionality of provisions of Section 1, Article 311, and Section 1, Article 312 of the Arbitration Procedure Code of the Russian Federation, in the interpretation given by the Supreme Arbitration Court of the Russian Federation, which affected their application by other arbitration courts. The applicants point out the illicit extension of the list of legal grounds for reconsideration of judicial acts under newly discovered circumstances and unlawful amendments to the procedure prescribed by the federal law for reconsideration of judicial acts which entered into legal force, and introduction of an order for calculating the limitation period for request to an arbitration court for reconsideration of the judicial act under newly discovered circumstances diverging from the order provided by the federal law (three months starting from the discovery of the relevant circumstances). Further, the applicants stress that, as a rule, it is complicated to determine the date on which a copy of the decision to deny transfer of the case to the Presidium of the Supreme Arbitration Court of the Russian Federation was served. In the applicants’ opinion, all this leads to violation of their rights guaranteed by the Constitution of the Russian Federation, namely by its Articles 19 (Section 1), 45 (Section 1), 46 (Section 1), 47 (Section 1), 55 (Section 3), 120 (Section 1), 123 (Section 3), 127, and 128 (Section 3).

1.2. Section 4, Article 170 of the Arbitration Procedure Code of the Russian Federation, provides for a possibility to refer, in the reasoning of the arbitration court judgment or decision, to Decrees of the Plenum of the Supreme Arbitration Court of the Russian Federation on issues of judicial practice. The constitutionality of this provision was also challenged by the Proizvodstvennoye Obyedineniye “Bereg” CJSC and Karbolit OJSC.

As follows from the abovementioned provision, the right of the arbitration court to refer to clarifications on issues of judicial practice given by decrees of the Supreme Arbitration Court of the Russian Federation as additional reasons for the delivered decision, corresponds to the power of the Supreme Arbitration Court of the Russian Federation to deliver clarifications on issues of judicial practice pursuant to Article 127 of the Constitution of the Russian Federation. This does not relieve the arbitration court of its obligation, provided by Article 120 of the Constitution of the Russian Federation, to resolve cases pursuant to law when it finds a contradiction between an act issued by a public authority or other body and the law.

Accordingly, the provision of Section 4, Article 170 of the Arbitration Procedure Code of the Russian Federation *per se* may not be regarded as violating anyone’s constitutional rights and freedoms. Therefore the complaints of the Proizvodstvennoye Obyedineniye “Bereg” CJSC and Karbolit OJSC in part challenging its constitutionality do not meet the admissibility criteria as

determined by the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”. To this extent the proceedings on the complaints are to be discontinued pursuant to Subsection 2, Section 1, Article 43, and Article 68 of the said Federal Constitutional Law.

1.3. Pursuant to 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 reviews the constitutionality of the legislative provisions challenged in complaints of individuals and their associations asserting a violation of constitutional rights and freedoms only to the extent that these statutory provisions were applied in the applicant’s case and infringe the applicant’s rights and freedoms. It decides on the subject matter as specified in the complaint considering not only the literal meaning of the normative act under review, but also the meaning these norms acquire in the law-enforcement practice and from their place within the hierarchy of legal acts.

Having regard to the foregoing, the subject matter for consideration by the Constitutional Court of the Russian Federation in the present proceedings is the interrelated provisions of Section 1, Article 311 of the Arbitration Procedure Code of the Russian Federation determining grounds for reconsideration of judicial acts under newly discovered circumstances, and Section 1, Article 312 of the said Code, prescribing a limitation period for filing a request for reconsideration of a judicial act under newly discovered circumstances, as they are interpreted by Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008.

2. The Constitution of the Russian Federation guarantees to everyone the right to judicial protection of his rights and freedoms (Section 1, Article 46). Within the meaning of Articles 1 (Section 1), 2, 4 (Section 2), 15, 17, 18, 19, and 118 (Section 1) of the Constitution of the Russian Federation, in the Russian Federation, whose legal system is based on the supremacy of law principle as an inalienable element of the rule of law state, everyone’s right to judicial protection is one of the inalienable human rights and freedoms. It is in the same time a guarantee of all other rights and freedoms. Administration of justice in its essence may be recognized as such only if it meets the requirements of fairness and provides for effective restoration of rights. The requirement of uniform court application of norms of the Constitution of the Russian Federation and federal laws based on it is conditioned by the principle of judicial independence in the administration of justice prescribed by the Constitution of the Russian Federation (Article 120 Section 1) taken together with the principles of supremacy of the Constitution of the Russian Federation and federal laws in the Russian legal system and everyone’s equality before the law and the court (Section 2, Article 4; Sections 1 and 2, Article 15; Section 1, Article 19).

As the Constitutional Court of the Russian Federation has repeatedly pointed out, the constitutional right to judicial protection implies specific guarantees of effective restoration of rights in a fair trial ensuring safeguard of the rights and freedoms of man and citizen from arbitrariness of the authorities. Accordingly, in exercising judicial protection of rights and freedoms it is possible to challenge before a court any decision and action (or inaction) of any public authority, including judicial authorities. One of the judicial protection guarantees is the possibility to have a case reconsidered by a superior court (*inter alia*, for the purpose of correction of judicial mistakes) after consideration of the case in the judicial instance, which is recognized as final by the relevant legislation, i.e. that it cannot be altered within the regular procedure. Lack of a possibility to reconsider a faulty judicial act, which possibility should be guaranteed by the state in certain form (with regard to the specifics of each particular type of judicial proceedings) derogates from and imposes limitations on the right to fair trial (Judgments No. 4-II of 2 February 1996, No. 5-II of 3 February 1998, No. 9-II of 16 March 1998, No. 20-II of 2 July 1998, No. 21-II of 6 July 1998, No. 9-II of 28 May 1999, and No. 5-II of 11 May 2005).

Pursuant to Article 47 (Section 1) of the Constitution of the Russian Federation no one may be deprived of the right to trial of his case in the court and by the judge having jurisdiction over the case according to law. This constitutional right, the right to a lawful court, is an essential component of the right to judicial protection set forth by Article 46 (Section 1) of the Constitution of the Russian Federation, and at the same time a guarantee of independence and impartiality of the court. Provisions of international treaties of the Russian Federation correspond to these provisions. First and foremost, this is the Convention for the Protection of Human Rights and Fundamental Freedoms which imposes an obligation on the states to provide to everyone protection of his rights in a fair trial by an independent and impartial tribunal established by law, whereas such tribunal should be competent, i.e. have necessary competence to consider the particular case pursuant to jurisdictional rules established by law.

According to the legal opinion of the Constitutional Court of the Russian Federation, cognizance implies legal determination of subject matter competence (*inter alia* between general jurisdiction courts and arbitration courts) and within every type of jurisdiction determination of a particular court to be competent to consider a particular case. This law should establish the criteria which determine, in a normative form (as general rules), which court should consider a particular case, so that it allows a court (judge), parties and other participants in the proceedings to avoid any uncertainty in this issue. Otherwise this uncertainty would have to be eliminated by a law-enforcement decision, i.e. rely on the discretionary powers of a law-enforcement body or official, and, accordingly, to determine the cognizance of the case not by a law. Failure to

observe the cognizance as set forth by the federal legislator violates the constitutional imperative of a lawful court and hence the very right to judicial protection. Consideration of a case in violation of the jurisdictional rules does not meet the requirements of a fair trial, since the court which is not competent to consider a particular case is not a lawful court within the meaning of Articles 46 and 47 of the Constitution of the Russian Federation; and judicial acts delivered by it may not be recognized as truly safeguarding rights and freedoms (Judgment No. 9-Π of 16 March 1998; decisions No. 262-O of 11 July 2006 and No. 144-O-Π of 15 January 2009).

The mentioned legal opinion of the Constitutional Court of the Russian Federation revealing the contents of the constitutional right to a lawful court is relevant for the determination of a competent court, judicial instance, applicable procedure of reconsideration of a judicial act, which are prescribed by law and may not be arbitrarily altered by a decision of a law-enforcement body.

3. The procedure for judicial review of judicial decisions upon complaints of the interested parties is not explicitly prescribed in the text of Constitution of the Russian Federation. Such procedure is established on the basis of the Constitution of the Russian Federation by the federal legislator, who has sufficiently broad discretion in determination of the system of judicial instances, sequence and procedure for appeals, grounds for annulment or amendment of judicial decisions by superior courts, competence of superior courts. However, in any case it must exercise the respective regulation giving due regard to the constitutional aims and values, generally recognized principles and norms of international law and international obligations of the Russian Federation.

Aiming to create a mechanism of effective restoration of violated rights, the Arbitration Procedure Code provides for review of judicial acts of arbitration courts in appellate and cassation proceedings, as well as in supervisory review proceedings and reconsideration under newly discovered circumstances.

Proceedings for supervisory review of judicial acts are regulated by Chapter 36 of the Arbitration Procedure Code of the Russian Federation. According to the regulation provided in it, the judicial acts of arbitration courts, which have entered into legal force, may be reviewed only by the Supreme Arbitration Court of the Russian Federation upon requests of persons participating in the case and other interested parties specified in the law, as well as upon a prosecutor's request. On a preliminary stage the relevant requests are considered by the judicial section of the Supreme Arbitration Court of the Russian Federation, which decides as to whether the grounds for review of a judicial act as set forth by Article 304 of the Arbitration Procedure Code of the Russian Federation are present. The judicial body competent to decide on the merits of the case in supervisory proceedings is the Presidium of the Supreme Arbitration Court of the

Russian Federation, which may amend or annul the contested judicial act that entered into legal force.

Unlike supervisory review proceedings, reconsideration under newly discovered circumstances of a judicial act which entered into legal force is carried out under Chapter 37 of the Arbitration Procedure Code of the Russian Federation upon a request of persons participating in the case and on the grounds set forth by Article 311 of the said Code. This Article defines newly discovered circumstances as significant circumstances of the case which were not and could not be known by the applicant, *inter alia* annulment of a judicial act or decision of another body, which served as the basis for deciding the case.

3.1. Pursuant to Article 127 of the Constitution of the Russian Federation, the Supreme Arbitration Court of the Russian Federation shall be the supreme judicial body for settling economic disputes and other cases examined by arbitration courts, shall carry out judicial supervision over their activities according to the procedural forms prescribed by federal law, and shall provide clarifications on issues of judicial practice.

The Federal Constitutional Law No. 1-ΦК3 of 28 April 1995, “On Arbitration Courts in the Russian Federation”, developing the mentioned constitutional provisions stipulates that the Supreme Arbitration Court of the Russian Federation reviews on supervision judicial acts of Russian Federation arbitration courts, which entered into legal force (Subsection 2, Section 1, Article 10), reconsiders under newly discovered circumstances the judicial acts it has delivered and which have entered into legal force (Subsection 3, Section 1, Article 10). The Plenum of the Supreme Arbitration Court of the Russian Federation provides clarifications on issues of judicial practice and delivers decrees on the same issues, which are binding for arbitration courts in the Russian Federation (Subsection 1, Section 1 and Section 2, Article 13). The Presidium of the Supreme Arbitration Court of the Russian Federation reviews on supervision judicial acts of Russian Federation arbitration courts, which entered into legal force, considers certain issues of judicial practice, and informs arbitration courts of the Russian Federation on the outcomes of such consideration (Article 16).

The power of the Supreme Arbitration Court of the Russian Federation to provide clarifications on issues of judicial practice, as follows from Article 127 of the Constitution of the Russian Federation, is aimed to promote uniformity of interpretation and application of statutory norms by arbitration courts and represents an element of the constitutional mechanism for the protection of the unity and coherence of the Russian legal system. This mechanism is based on provisions of Articles 15 (Section 1), 17, 18, 19, and 120 of the Constitution of the Russian Federation, and its implementation in procedural regulation is ensured by the prescribed by law possibility to annul judicial acts, *inter alia* due to their divergence from the acts of the supreme

court within the system of arbitration courts of the Russian Federation, which provide clarifications on issues of judicial practice.

The exercise of this power by the Supreme Arbitration Court of the Russian Federation objectively may not fail to rely on its legal opinions interpreting legislative provisions subject to clarification. Denial of the right of the Supreme Arbitration Court of the Russian Federation to provide, on the basis of aggregated judicial practice, abstract interpretation of legal norms applied by arbitration courts and denial of the right to form respective legal opinions would result in derogation from its constitutional functions and purpose as the supreme court in the system of arbitration courts, especially because it may neither transgress the limits of its competence determined by the Constitution of the Russian Federation and federal constitutional laws nor intervene in the competence of other public authorities (including judicial bodies).

As follows from the legal opinion expressed in Constitutional Court of the Russian Federation Judgment No. 19-II of 16 June 1998, clarifications given by the Supreme Arbitration Court of the Russian Federation on issues of judicial practice may not be regarded as an official act revealing the constitutional meaning of the statute, i.e. *de facto* establishing its constitutionality or unconstitutionality. Pursuant to Articles 118 and 125 of the Constitution of the Russian Federation, constitutional proceedings are the adequate procedure for resolution of these issues arising due to unconstitutional interpretation of a law in the law-enforcement practice. Therefore an arbitration court of any instance considering a specific case is obliged to submit a request to the Constitutional Court of the Russian Federation if it reaches the conclusion on unconstitutionality of the applicable statute, *inter alia* as interpreted by the Supreme Arbitration Court of the Russian Federation.

3.2. Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008 clarifies the procedural mechanism providing a possibility to reconsider, under newly discovered circumstances, a judicial act which entered into legal force and is challenged by an applicant in supervisory review proceedings. Provided that such act is based on statutory provisions for which enforcement practice was set (or altered) after its delivery by a decree of the Plenum of the Supreme Arbitration Court of the Russian Federation or decision of the Presidium of the Supreme Arbitration Court of the Russian Federation, adopted upon consideration of another case on supervision and giving due regard to the established practice, *inter alia* relying on the legal opinion expressed by the Plenum of the Supreme Arbitration Court of the Russian Federation.

On the one hand, this procedural mechanism allows to enhance the efficiency of review of judicial acts which have entered into legal force, while the Presidium of the Supreme Arbitration Court of the Russian Federation is relieved of consideration of cases which should be

decided relying on the existing legal opinion formulated by the Supreme Arbitration Court of the Russian Federation. On the other hand, for the persons participating in the case it provides for a stronger possibility to achieve protection of their rights or lawful interests in other arbitration courts by referring to the statutory norms interpretation given by the Supreme Arbitration Court of the Russian Federation.

This approach is predetermined in the system of arbitration procedure regulation in force by the possibility to reconsider, under newly discovered circumstances, a judicial act which entered into legal force, due to loss of legal force by the statutory act on which such judicial act is based. In particular, Article 311 of the Arbitration Procedure Code of the Russian Federation lists, among other grounds for reconsideration under newly discovered circumstances, significant circumstances of the case which were not and could not be known by the applicant, annulment of a judicial act or decision of another public authority serving as the ground for the decision by an arbitration court (Section 4), and recognition of the law that was applied by the arbitration court in a particular case as non-conforming to the Constitution of the Russian Federation, by the Constitutional Court of the Russian Federation in connection with the delivery of a judgment in the case where the applicant had filed a complaint about it with the Constitutional Court of the Russian Federation (Section 6).

3.3. Considering the issue of reconsideration, under newly discovered circumstances, of judicial acts delivered on the basis of legal provisions which are subsequently recognized by the Constitutional Court of the Russian Federation as not conforming to the Constitution of the Russian Federation, the Constitutional Court of the Russian Federation reached the following conclusions.

The provision of Section 3, Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, applies to persons who were not parties to constitutional proceedings if their cases were decided on the basis of acts which were recognized unconstitutional. Pursuant to this provision, judgments and decisions of courts and other bodies based on acts which were recognized unconstitutional shall not be enforced and shall be reconsidered in cases prescribed by law, i.e. by having recourse to procedural institutions and on substantive law grounds provided by other legislation. Reconsideration of judicial acts in connection with the recognition of a certain norm as unconstitutional may not, however, be exercised without properly expressed will of the interested parties and without giving due regard to the requirements of respective legislation. All judicial procedures prescribed by law may be used to protect the rights of these persons, *inter alia* supervisory review or reconsideration under newly discovered circumstances. The existence of substantive or procedural law grounds and possible obstacles to reconsideration of decisions based on unconstitutional acts (e.g. due to the

expiration of the limitation period or the period to re-open proceedings under newly discovered circumstances) shall be established on the basis of the citizen's or authorized official's application by the court which is competent to perform such review, and provided that general rules of court proceedings are complied with (decisions No. 4-O of 14 January 1999 and No. 78-O of 5 February 2004).

In its Decision No. 211-O of 27 May 2004, the Constitutional Court of the Russian Federation reaffirmed its previously expressed legal opinion that Section 6, Article 311 of the Arbitration Procedure Code of the Russian Federation, may not be regarded as precluding reconsideration, under newly discovered circumstances, of arbitration court judicial acts which entered into legal force, before the decision of the Constitutional Court of the Russian Federation establishing the constitutional meaning of the underlying norms.

In its Decision No. 556-O-R of 11 November 2008, the Constitutional Court of the Russian Federation expressed a legal opinion determining legal grounds and a precise mechanism of subsequent reconsideration of decisions by courts of general jurisdiction and arbitration courts in cases of applicants who filed their complaints to the Constitutional Court of the Russian Federation, where the contested norm was applied in its unconstitutional interpretation and thus their constitutional rights and freedoms were violated.

Pursuant to these legal opinions, constitutional interpretation of a normative act or its separate provisions reviewed in constitutional proceedings falls within the competence of the Constitutional Court of the Russian Federation, which, in deciding on the case and establishing the conformity of the contested act to the Constitution of the Russian Federation, in particular in their normative content, reveals the constitutional meaning of the law in force. In such cases the constitutional meaning of the reviewed normative act established by the Constitutional Court of the Russian Federation is generally binding, *inter alia* for the courts deciding particular cases.

The legal force of decisions by the Constitutional Court of the Russian Federation establishing the constitutional meaning of norms precludes a possibility to apply such norms (and hence terminates their effect) in an unconstitutional interpretation, i.e. loss of force for the future in the meaning previously acceptable but diverging from the established constitutional meaning. Consequently, as a general rule, from the moment a decision of the Constitutional Court of the Russian Federation enters into force these norms should not be interpreted in any other way or applied in any other meaning. Therefore a decision establishing the constitutional meaning of the norm has legal effect similar to recognition of the norm as non-conforming to the Constitution of the Russian Federation as provided by Section 2, Article 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", which guarantees reconsideration of the applicant's case by a competent authority in established procedure.

It follows from the abovementioned legal opinions of the Constitutional Court of the Russian Federation, which remain in force, that arbitration courts shall reconsider judicial acts, *inter alia* under newly discovered circumstances, if they are based on a norm which was applied in the particular case and assigned the meaning diverging from its constitutional meaning subsequently established by the Constitutional Court of the Russian Federation.

Interpretation of the provisions of Article 311 of the Arbitration Procedure Code of the Russian Federation as articulated in Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008 corresponds to the abovementioned legal opinions of the Constitutional Court of the Russian Federation regarding the legal force of its judgments and decisions establishing the constitutional meaning of certain normative provisions. Accordingly, the possibility of reconsidering judicial acts is not precluded for arbitration courts, *inter alia* under newly discovered circumstances, if these acts are based on a norm which was applied in a particular case and assigned the meaning diverging from its legal meaning subsequently established by the Supreme Arbitration Court of the Russian Federation. As follows from Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008, the Supreme Arbitration Court of the Russian Federation in these cases allows reconsideration, under newly discovered circumstances, of an arbitration court judicial act which entered into legal force (and, as follows from the law-enforcement practice of arbitration courts, regardless of its actual enforcement).

3.4. In the Russian judicial system, interpretation of a law by superior judicial authorities has significant influence on the formation of judicial practice. As a general rule, assuming the power of superior instances to annul and alter judicial acts, it is *de facto* binding for lower courts. At the same time, reconsideration and annulment of judicial acts previously delivered and relying on other interpretations of the applied norms is allowed in cases where retroactive effect is permissible under general legal and constitutional principles.

In the case law of the European Court of Human Rights it is not rare that cases are decided with reference to its legal opinions elaborated in previous decisions on similar cases, *inter alia* upon applications of Russian citizens. This demonstrates that the European Court of Human Rights regards its legal opinions as inducing a uniform approach in evaluating similar factual and legal grounds for deciding particular cases.

This trend is observed in the practice of arbitration courts where this practice was formed due to *de facto* endorsement of a possibility of reconsidering, under newly discovered circumstances, judicial acts delivered before the Supreme Arbitration Court of the Russian Federation expressed its legal opinion giving an interpretation of the underlying norms which diverge from the interpretation previously given in the application of these norms. This

endorsement is provided by Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008.

Thus, as a result of interpreting the provisions of Article 311, Arbitration Procedure Code of the Russian Federation, as provided by the Supreme Arbitration Court of the Russian Federation in Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008, the normative basis for practical reconsideration of judicial acts under newly discovered circumstances in the system of arbitration courts is in fact further clarified.

4. The general legal requirement of formal certainty, clarity and lucidity of a legal norm (formal legal certainty), which is preconditioned by the nature of normative regulation in legal systems relying on the rule of law, stems directly from the principle of legal equality (Sections 1 and 2, Article 19) and the principle of supremacy of the Constitution of the Russian Federation and federal laws based on it, as they are prescribed by the Constitution of the Russian Federation. Uncertainty of legal norms leads to their ambivalent understanding and hence inconsistent application, opens a possibility for unlimited discretion in law-enforcement and results in arbitrariness, and thus violates the abovementioned constitutional principles which may not be secured without uniform understanding and interpreting legal norms by all enforcement authorities (Judgments of the Constitutional Court of the Russian Federation No. 3-II of 25 April 1995, No. 11-II of 15 July 1999, and No. 16-II of 11 November 2003).

Legal norms may be interpreted by the Supreme Arbitration Court of the Russian Federation both in connection with consideration of a particular case (*ad hoc*) and with respect for all cases with similar factual circumstances on the basis of aggregated judicial practice in order to secure their uniform understanding and application by arbitration courts. Accordingly, within the procedure introduced by Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008 it is permissible to provide interpretation of a legal norm on the basis of aggregation of judicial practice. Such interpretation shall be regarded as a legal opinion having retroactive effect only if it is specifically referred to as such by the Supreme Arbitration Court of the Russian Federation and is formally certain, clear and lucid.

Otherwise the issue of retroactive effect of the interpretation given by a decree of the Plenum of the Supreme Arbitration Court of the Russian Federation or a decision of the Presidium of the Supreme Arbitration Court of the Russian Federation in a particular case having reference to a legal opinion expressed by the Supreme Arbitration Court of the Russian Federation (*inter alia* in clarifications by its Plenum) would have to be decided by the judicial section of the Supreme Arbitration Court of the Russian Federation under a similar subsequent request for reconsideration. While the judicial section performs the function of preliminary

consideration of these requests it is not in a position to provide clarifications on issues of judicial practice. Besides, lack of reference to retroactive effect in the decision might cause diverging construction by different judges of the nature and consequences of the norm interpretation given by the Supreme Arbitration Court. This would lead to violation of the requirement of formal legal certainty and ultimately to violation of the constitutional principle of everyone's equality before the law and the court.

Thus, reconsideration under newly discovered circumstances of judicial acts which entered into legal force, under Articles 311 and 312 of the Arbitration Procedure Code of the Russian Federation as interpreted by Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008 implies the necessity of explicit indication of the possible retroactive effect of the interpretation of a legal norm provided in a decree of the Plenum of the Supreme Arbitration Court of the Russian Federation or a decision of the Presidium of the Supreme Arbitration Court of the Russian Federation.

5. Pursuant to Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008 interpretation of a particular legal norm setting (altering) its enforcement practice if it is given in a decree of the Plenum of the Supreme Arbitration Court of the Russian Federation or a decision of the Presidium of the Supreme Arbitration Court of the Russian Federation may be regarded as a ground for reconsideration, under newly discovered circumstances, of a judicial act which entered into legal force before the Supreme Arbitration Court set the judicial practice on the issue. This possibility is preconditioned by the request for annulment, in supervisory review procedure, of a judicial act delivered in the case in which the applicant participated.

It follows from the above that arbitration courts are obliged to assume the retroactive effect of legal opinions expressed both in an abstract interpretation of legislation by the Plenum of the Supreme Arbitration Court of the Russian Federation (upon aggregation of judicial practice) and in connection with consideration of a particular case by the Presidium of the Supreme Arbitration Court of the Russian Federation when the opinion is aimed at uniform application of legal norms in cases with similar factual circumstances. However, a specific reference of the Supreme Arbitration Court, which precludes arbitrary assignment of retroactive effect to the interpreted legal norm, is necessary and provided that such reference does not predetermine the decision of the competent arbitration court in proceedings for reconsideration under newly discovered circumstances.

At the same time it is presumed that the general principles of effect of legal norms (*rationae temporis*, *rationae loci*, and *rationae personae*) may not fail to apply to a legal opinion expressed in a decree of the Plenum of the Supreme Arbitration Court of the Russian Federation

or a decision of the Presidium of the Supreme Arbitration Court of the Russian Federation interpreting legal norms and determining the meaning of normative regulation. In particular, it is impermissible for norms to have retroactive effect if they impair the position of persons to whom their effect is extended (Section 1, Article 54 of the Constitution of the Russian Federation). The same principles are applicable to consideration of cases under the procedure provided by Chapter 37 of the Arbitration Procedure Code of the Russian Federation.

As is stressed in Judgment of the Constitutional Court of the Russian Federation No. 81-r of 1 October 1993 and repeatedly confirmed in the following decisions (decisions No. 37-O-O of 25 January 2007, No. 262-O-O of 15 April 2004, No. 745-O-O of 20 November 2008, No. 691-O-O of 16 July 2009), the legislator takes into account the specificity of social relations regulated by law relying on the general principle of applicability of a law for the future and exercising its exclusive right to give retroactive effect to a law. Retroactive effect is predominantly given to laws in the interests of an individual in his relations with the state in public domain (criminal, tax, pension regulations).

Accordingly, bearing in mind the constitutional principle of impermissibility to give retroactive effect to a law establishing or aggravating responsibility, and the legal opinions of the Constitutional Court of the Russian Federation in this regard, a decree of the Plenum of the Supreme Arbitration Court of the Russian Federation or a decision of the Presidium of the Supreme Arbitration Court of the Russian Federation may not have retroactive effect if it provides a legal norm interpretation, which impairs the position of a person held or being held administratively responsible. The position of taxpayers may not be impaired due to such interpretation either (as compared to the interpretation previously existing in the judicial practice), since, pursuant to Articles 54 and 57 of the Constitution of the Russian Federation and as is stated in Judgment of the Constitutional Court of the Russian Federation No. 13-II of 8 October 1997, any laws impairing the taxpayers' position may not be retroactive, *inter alia* by means of acts or official or other interpretation or the law-enforcement practice.

Prohibition on giving, through interpretation, retroactive effect to normative regulation which impairs the position of an individual in his relations with the state is also based on the requirement of formal certainty of a legal norm. It implies that participants in these relations should have a possibility to foresee to a reasonable extent the consequences of their actions and be confident of stability of their officially recognized status and acquired rights and obligations. Annulment of final judicial acts determining the rights of individuals or legal entities in their relations with the State, in particular when their right to obtain certain benefits is recognized, is precluded, except where the judicial act is delivered due to improper administration of justice, i.e. with violations which may not be rectified for the purpose of compensating the damage

caused by a judicial mistake (Judgment of the Constitutional Court of the Russian Federation No. 2-II of 5 February 2007).

Relying on the constitutional principles of equality and fairness, formal certainty of legal norms and permissible limits of retroactive effect of a law, the provisions of Article 311 of the Arbitration Code of the Russian Federation as interpreted by the Supreme Arbitration Court of the Russian Federation may not fail to differentiate according to the nature of the disputed relations between the cases where the retroactive effect is or is not given to a legal opinion provided in a decree of the Plenum of the Supreme Arbitration Court of the Russian Federation or a decision of the Presidium of the Supreme Arbitration Court of the Russian Federation. In any event it is not permissible to give retroactive effect to an interpretation of legal norms which impair the position of the subordinate (weaker) party in public relations. Any other approach would result in violation of the general principles of legal regulation and law-enforcement stipulated by Articles 19 (Sections 1 and 2), 46, 54 (Section 1), and 55 (Section 3) of the Constitution of the Russian Federation. Consequently, the possibility to reconsider judicial acts which entered into legal force on the basis of a legal opinion subsequently expressed in a decree of the Plenum of the Supreme Arbitration Court of the Russian Federation or a decision of the Presidium of the Supreme Arbitration Court of the Russian Federation is not precluded if it is necessary to restore and protect the rights and interests which due to their constitutional significance do not permit to keep in force a certain judicial act. The same approach is valid when a new interpretation improves the position of persons held liable in tax, administrative or other public domains, and in exceptional circumstances of disputes emerging from civil relations where the public interest of protecting an indeterminate group of people or a clearly weaker party in the legal relations is required.

Thus, the provisions of Article 311 of the Arbitration Procedure Code of the Russian Federation, in the interpretation given by Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008 and relying on their constitutional meaning in the system of legal regulation in force, do not imply a possibility to prescribe retroactive effect to decrees of the Plenum of the Supreme Arbitration Court of the Russian Federation or decisions of the Presidium of the Supreme Arbitration Court of the Russian Federation providing a legal opinion of the Supreme Arbitration Court of the Russian Federation on applying statutory provisions without giving due regard to the nature of the disputed relations and constitutional framework of existence of legal norms which have retroactive effect.

This conclusion is in line with the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and the legal opinions of the European Court of Human Rights, *inter alia* expressed in judgments delivered upon applications of Russian citizens.

Changes in interpreting statutory provisions by the supreme judicial authority are regarded in the Russian judicial practice as a ground to annul judicial acts which entered into force, both in supervisory proceedings and by reconsideration under newly discovered circumstances. The European Court of Human Rights examines, in the first place, whether the annulment of the judicial act in the applicant's favour has caused impairment of his legal status as established by such act which entered into legal force, and further reviews the conformity of the procedure in which such annulment is exercised to the general principles of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights.

Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols imply a possibility to rectify faulty judicial acts as a component of the right to fair trial, however, the principle of legal certainty of the citizen's legal status has to be observed. Assuming impermissibility of re-examination of a case in which a final judicial act was rendered, the European Court of Human Rights recognizes a possibility to annul a judicial act which entered into legal force only under exceptional circumstances (*Brumărescu v. Romania*, Judgment of 28 October 1999, Reports of Judgments and Decisions 1999-VII). This opinion was developed in the Judgment of 24 July 2003, *Ryabykh v. Russia*, reading that higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice but not to carry out a fresh examination; the review should not be treated as an appeal in disguise, and the mere possibility of two views on the subject is not a ground for re-examination.

Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character. In particular, pursuant to Article 4 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, reopening a criminal case for an offence for which an individual has already been finally acquitted or convicted is possible if there is evidence of new or newly discovered facts or if there was a fundamental defect in the previous proceedings which could affect the outcome of the case. This norm, which was formulated for the purposes of criminal proceedings, taken together with Article 6, Convention for the Protection of Human Rights and Fundamental Freedoms, was extended by the European Court of Human Rights to civil cases considering that the departure from the principle of legal certainty in such cases is possible for correcting "fundamental defects" proving improper exercise of justice (*Sutyazhnik v. Russia*, Judgment of 23 July 2009). The degree to which the ground for annulment of a judicial decision meets this criterion and departure from the mentioned principle is justified is decided by the European Court of Human Rights on a case-by-case basis.

A vast majority of judgments delivered upon complaints against Russia regarding the annulment of judicial decisions in civil cases under newly discovered circumstances are analagous. In particular, in cases with similar factual circumstances, such as cases on recalculation of old-age pensions with the application of an increased coefficient, the European Court of Human Rights has recognized the annulment of judicial decisions which entered into force as violating the principle of legal certainty. Such annulment resulted in deprivation of the applicants of the previously awarded benefits which were to be provided by the state or other subjects exercising public functions. It was noted at the same time that the delivery of a judicial decision on the payment of a pension in a definite amount cannot be relied upon as a guarantee against changes of the pension legislation in future, *inter alia* to the detriment of the pension recipients' income. However, the state cannot interfere with the process of adjudication in an arbitrary manner. Thus, when the authorities loose the case in court but then obtain reopening of the case by introducing new legislation with retroactive effect, there is a possibility of violation of the right to fair trial as determined by interrelated provisions of Section 1, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and Section 2, Article 4 of Protocol No. 7 thereto.

The European Court of Human Rights regards such practice as impermissible use of state powers to change normative regulation (or interpretation) in order to alter unfavourable practice in deciding certain type of cases, while such use of powers is not comparable to the opportunities of an individual. State intervention should be proportionate to the socially justified legal aim, whereas its interest to ensure uniform application of the pensions law alone should not lead to retrospective recalculation of the awarded amounts (*Pravednaya v. Russia*, Judgment of 18 November 2004, *Vasilyev v. Russia*, Judgment of 13 October 2005, *Sukhobokov v. Russia*, Judgment of 13 April 2006, *Bulgakova v. Russia*, Judgment of 18 January 2007, *Kondrashina v. Russia*, Judgment of 19 July 2007). In *Kuznetsova v. Russia* (Judgment of 7 June 2007), the European Court of Human Rights noted that the procedure of re-opening a civil case on account of newly discovered circumstances does not by itself contradict the principle of legal certainty in so far as it is used to correct miscarriages of justice; and the task for the European Court of Human Rights is to determine whether this procedure was applied in a manner which is compatible with Section 1, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

It follows from the abovementioned decisions of the European Court of Human Rights that the annulment of a judicial decision due to attribution of retroactive effect to an interpretation provided by a superior court may not be regarded as a violation of the legal certainty principle, since it is necessary to ensure fair trial and restoration of a violated right.

Finding a violation of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms the European Court of Human Rights does not negate the possibility to consider the change in the interpretation of the legislation as a newly discovered circumstance but emphasizes that change of the law-enforcement interpretation does not justify the annulment of a judicial decision delivered in the applicant's favour. It links the impermissibility of annulment not to the nature of circumstances as non-existent at the moment of consideration of the case, but rather with the annulment of a judicial decision ("a law for the parties" since the times of Roman law), which led to detriment of the individual's position as established by such decision.

Thus, the European Court of Human Rights regards the annulment of a judicial decision due to change in the interpretation of the underlying legal norm by a superior court after the delivery of such decision as incompatible with provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (irrespective of the annulment procedure used), when such annulment leads to detriment of the citizen's legal position as established by the judicial decision. As a justifying reason it recognizes protection of the status acquired by the citizen or association of citizens as a clearly weaker party in relations with the state since this protection ensures the effect of the principle of legal certainty regarding the citizen's legal status. This principle may not be regarded as a hindrance to the annulment of a judicial decision which entered into force when it is required to restore the rights of citizen or improve their legal status (in particular, on grounds which in other cases would be recognized as impermissible). Eventually it conforms to the general principles of the legal norms' *rationae temporis* effect, including the attribution of retroactive effect.

6. Provisions of Articles 311 and 312 of the Arbitration Procedure Code of the Russian Federation, in their systemic unity with other provisions of Chapter 37 do not imply the possibility of reconsideration. under newly discovered circumstances. of judicial acts which entered into legal force in any procedure other than that provided by that Chapter and only if general jurisdictional rules for such claims, the procedure, and time limits of reconsideration are observed.

Once a decree of the Plenum of the Supreme Arbitration Court of the Russian Federation or a decision of the Presidium of the Supreme Arbitration Court of the Russian Federation setting the law-enforcement practice is recognized as a ground for reconsideration of judicial acts under newly discovered circumstances due to a new interpretation of the legislation, the interested parties must follow the general rules of procedure for reconsideration under newly discovered circumstances. Accordingly, the request for reconsideration under newly discovered circumstances has to be filed with the court which delivered the contested judicial act, and that

court has to decide according to law and with regard to particular circumstances of the case on the presence or absence of grounds for reconsideration. Any other approach would be a violation of the constitutional principles of a lawful court and independence of judges and their subordination only to the Constitution of the Russian Federation and federal law.

As follows from Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008, an indication of the possibility to reconsider a contested judicial act under newly discovered circumstances should be contained in a decision to deny transfer of the case to the Presidium of the Supreme Arbitration Court of the Russian Federation for supervisory review. Thus, these circumstances are not determined by the arbitration court which delivered the contested judicial act, but rather by the judicial section of the Supreme Arbitration Court of the Russian Federation. However, pursuant to law the judicial section of the Supreme Arbitration Court performs only the function of preliminary examination of requests for supervisory review of judicial acts and determination of grounds for transfer of the case to the Presidium of the Supreme Arbitration Court of the Russian Federation (analysis of the judicial prospects of the case).

The arbitration procedure legislation in force does not provide for any specific mechanism allowing the inferior court that delivered the contested judicial act to disagree with the decision of the judicial section of the Supreme Arbitration Court of the Russian Federation, which is *de facto* binding. However, an indication of the possibility to reconsider the contested judicial act under newly discovered circumstances in a decision of the judicial section of the Supreme Arbitration Court on refusing to transfer the case to the Presidium of the Supreme Arbitration Court of the Russian Federation for supervisory review may not bind the arbitration court which delivered the contested judicial act. Assuming that the decision to re-open proceedings has to be made by the same arbitration court (Article 309 of the Arbitration Procedure Code of the Russian Federation), ascribing of the binding force to the indication in the decision by the judicial section of the Supreme Arbitration Court of the Russian Federation would result in violation of the constitutional principles of lawful court and independence of judges. However, this does not exclude the right of the judicial section of the Supreme Arbitration Court of the Russian Federation to indicate a possibility of such reconsideration, even if this indication may not be regarded as binding by the inferior court which delivered the contested judicial act and may not eliminate the necessity to observe the requirements of Chapter 37 of the Arbitration Procedure Code of the Russian Federation as to procedural form of reconsideration of judicial acts under newly discovered circumstances.

At the same time, for the purpose of securing the principle of legal certainty and stability of civil relations, Decree of the Plenum of the Supreme Arbitration Court of the Russian

Federation No. 14 of 14 February 2008 notes the time limits for reconsideration under newly discovered circumstances (within the limitation period for challenging judicial acts in supervisory proceedings (within six months) and within three months from the date the applicant was served with a copy of the decision to deny transfer of the case for supervisory review by the Presidium of the Supreme Arbitration Court of the Russian Federation). In itself it may not be regarded as a violation of the time limits set forth by Article 312 of the Arbitration Procedure Code of the Russian Federation, stipulating that the request to the arbitration court shall be filed within three months from the day of discovery of circumstances serving as the ground for reconsideration (Section 1), and permitting restoration of the missed time limit within six months from the day of discovery of such circumstances (Section 2).

Therefore, the interrelated provisions of Articles 311 and 312 of the Arbitration Procedure Code of the Russian Federation, in the interpretation given by Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008 may not be regarded as giving the indication by the judicial section of the Supreme Arbitration Court of the Russian Federation of a possibility of reconsideration under newly discovered circumstances the status of a mandatory requirement for subsequent reconsideration of the contested judicial act. Equally, it does not preclude the possibility of filing an interested person's direct request for reconsideration, under newly discovered circumstances, of a judicial act which entered into legal force, pursuant to Chapter 37 Arbitration Procedure Code of the Russian Federation, and within the established time limits.

7. Thus, the provisions of Section 1, Article 311, and Section 1, Article 312 of the Arbitration Procedure Code of the Russian Federation, as interpreted by the Supreme Arbitration Court of the Russian Federation in Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008 in the system of legal regulation of reconsideration of legal acts under newly discovered circumstances do not contradict the Constitution of the Russian Federation in their normative content (Subsection 1, Section 1, Article 86 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation"), since they are aimed at securing fairness of judicial decisions, full and effective judicial protection of rights and freedoms.

The mechanism of reconsideration of judicial acts under newly discovered circumstances, as it is formed on the basis of provisions of Articles 311 and 312 of the Arbitration Procedure Code of the Russian Federation, in the interpretation given by the Supreme Arbitration Court of the Russian Federation, relies on the powers of the Supreme Arbitration Court of the Russian Federation as set forth by Article 127 of the Constitution of the Russian Federation. It may not be recognized as violating the constitutional requirements of a lawful court and independence of

judges on the sole ground that Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008 provides for a broader interpretation of these provisions due to the actual needs of proceedings in arbitration courts. From the moment this Judgment enters into force, the provisions of Articles 311 and 312 of the Arbitration Procedure Code of the Russian Federation as interpreted by the Supreme Arbitration Court in Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008 shall be applicable in their constitutional meaning established by the Constitutional Court of the Russian Federation. With regard to that, the Constitutional Court of the Russian Federation refrains from reviewing, in the present case, these provisions from the standpoint of their conformity with the separation of powers and division of competences between federal bodies of state power established by the Constitution of the Russian Federation (Subsections 4 and 5, Section 1, Article 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”).

This conclusion does not affect the power of the federal legislator to introduce necessary amendments to the legislation in force in order to ensure uniform application, in the practice of arbitration courts, of the institution of reconsideration of judicial acts which entered into force under newly discovered circumstances.

Concluding from the above and pursuant to Article 6, Section 1 and 2, Article 71, Articles 72, 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 the interrelated provisions of Section 1, Article 311, and Section 1, Article 312 of the Arbitration Procedure Code of the Russian Federation, in the interpretation given by Section 5.1 of Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 17 of 12 March 2007 “On Application of the Arbitration Procedure Code of the Russian Federation in Reconsideration Under Newly Discovered Circumstances of the Judicial Acts Which Have Entered Into Legal Force” (as amended by Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008), which allow for reconsideration, under newly discovered circumstances, of a judicial act which entered into legal force and which is challenged by the applicant in supervisory review proceedings, provided that such judicial act was based on statutory provisions for which the enforcement practice was set by the Supreme Arbitration Court of the Russian Federation after the delivery of that judicial act in a decree of the Plenum of the Supreme Arbitration Court of the Russian Federation or a decision of the Presidium of the Supreme Arbitration Court of the Russian Federation, even if

such decision was delivered in supervisory review proceedings of some other case, as conforming to the Constitution of the Russian Federation to the extent that these provisions in their constitutional meaning:

- do not imply attribution of retroactive effect to legal opinions expressed in the relevant decree by a Plenum of the Supreme Arbitration Court of the Russian Federation or decision of the Presidium of the Supreme Arbitration Court of the Russian Federation without due consideration of the nature of the disputed relations and the constitutional framework of application of norms with retroactive effect established for such cases, as determined in the present Judgment;

- allow for reconsideration, under newly discovered circumstances, of a judicial act which entered into legal force, provided only that the relevant decree of a Plenum of the Supreme Arbitration Court of the Russian Federation or decision of the Presidium of the Supreme Arbitration Court of the Russian Federation contains an explicit indication of the retroactive effect of the legal opinion expressed in it for cases with similar factual circumstances;

- do not imply that the indication of a possibility of reconsideration, under newly discovered circumstances, of the contested judicial act in the decision of the judicial section of the Supreme Arbitration Court of the Russian Federation should be considered a mandatory requirement for such reconsideration;

- do not preclude the possibility of an interested person filing a direct request for reconsideration, under newly discovered circumstances, of a judicial act which entered into legal force to the arbitration court which delivered the contested judicial act;

- do not allow reconsideration, under newly discovered circumstances, of a judicial act which entered into legal force if the procedure set forth by Chapter 37 of the Arbitration Procedure Code of the Russian Federation is violated.

2. The constitutional meaning of Section 1, Article 311, and Section 1, Article 312 of the Arbitration Procedure Code of the Russian Federation, as established by the Constitutional Court of the Russian Federation with regard to clarifications given in Section 5.1 of Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 17 of 12 March 2007, “On Application of the Arbitration Procedure Code of the Russian Federation in Reconsideration Under Newly Discovered Circumstances of the Judicial Acts Which Have Entered Into Legal Force” (as amended by Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of 14 February 2008), is generally binding and precludes any other interpretation in the law-enforcement practice.

3. For the purpose of ensuring uniform application of the provisions of Chapter 37 of the Arbitration Procedure Code of the Russian Federation in the practice of arbitration courts, the

federal legislator should introduce amendments to the arbitration procedure legislation within a six months period, and it shall be guided by the requirements of the Constitution of the Russian Federation and with consideration of the legal opinion of the Constitutional Court of the Russian Federation expressed in the present Judgment. The respective amendments should prescribe a possibility of reconsideration, under newly discovered circumstances, of a judicial act delivered by an arbitration court, when such judicial act was based on statutory provisions for which the enforcement practice was set by the Supreme Arbitration Court of the Russian Federation after the delivery of that judicial act in a decree of the Plenum of the Supreme Arbitration Court of the Russian Federation or a decision of the Presidium of the Supreme Arbitration Court of the Russian Federation, even if such decision was delivered in supervisory review proceedings in some other case considering the existing judicial practice, *inter alia* the legal opinions expressed by the Plenum of the Supreme Arbitration Court of the Russian Federation.

Until the respective amendments are introduced in the legislation on arbitration procedure, the provisions of Section 1, Article 311, and Section 1, Article 312 of the Arbitration Procedure Code of the Russian Federation, shall be applied in their constitutional interpretation provided by the Constitutional Court of the Russian Federation in this Judgment.

4. The proceedings on the complaints related to the review of constitutionality of Section 4, Article 170 of the Arbitration Procedure Code of the Russian Federation are to be discontinued.

5. The cases of the Proizvodstvennoye Obyedineniye “Bereg” CJSC, Karbolit OJSC, Zavod “Mikroprovod” OJSC, and Nauchno-Proizvodstvennoye Predpriyatiye “Respirator” OJSC, to the extent they were decided on the basis of provisions of Section 1, Article 311, and Section 1, Article 312 of the Arbitration Procedure Code of the Russian Federation, in an interpretation diverging from the constitutional interpretation provided by the Constitutional Court of the Russian Federation in the present Judgment, are to be reconsidered by courts according to the established procedure.

6. Pursuant to Sections 1 and 2, Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable, and shall not require any confirmation by other authorities and state officials.

7. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be published in the Collection of Laws of the Russian Federation and *Rossiyskaya Gazeta*. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

No. 1-П