IN THE NAME OF THE RUSSIAN FEDERATION

Constitutional Court of the Russian Federation

Judgment

of 21 December 2011 No. 30-П

In the case concerning the review of constitutionality of the provisions of Article 90 of the Criminal Procedure Code of the Russian Federation in connection with the complaint of V.D.Vlasenko and Ye.A.Vlasenko

The Constitutional Court of the Russian Federation composed of the President V.D.Zor'kin, Judges K.V.Aranovsky, A.I.Boitsov, N.S.Bondar', G.A.Gadzhiev, Yu.M.Danilov, L.M.Zharkova, G.A.Zhilin, S.M.Kazantsev, M.I.Kleandrov, S.D.Knyazev, A.N.Kokotov, L.O.Krasavchikova, S.P.Mavrin, N.V.Mel'nikov, Yu.D.Rudkin, O.S.Khokhryakova, V.G.Yaroslavtsev,

In the attendance of the Representative of the Council of Federation, PhD in Law Ye.V.Vinogradova, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov,

pursuant to Article 125 (Section 4) of the Constitution of the Russian Federation, Paragraph 3 of Section 1, Sections 3 and 4 of Article 3, Section 1 of 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 constitutionality of the provisions of Article 90 of the Criminal Procedure Code of the Russian Federation.

The reason for the consideration of the case was the complaint of V.D.Vlasenko and Ye.A.Vlasenko. The ground for the consideration of the case was the discovered uncertainty of whether the legal provisions contested by the applicants are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur Yu.M.Danilov, statements by the parties' representatives, interventions by the participants invited to the hearing:

Ye.A.Borisenko for the Ministry of Justice of the Ruian Federation, T.A.Vasilieva for the Prosecutor General of the Russian Federation, G.K.Smirnov for the Investigation Committee of the Russian Federation, 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. According to Article 90 "Prejudice" of the Criminal Procedure Code of the Russian Federation (in the wording of the Federal Law of 29 December 2009 No. 383-ФЗ), circumstances established by a sentence, having entered into legal force, or by other court decision, having entered into legal force, adopted within the framework of civil, arbitration or administrative judicial proceedings, shall be recognized by a court, prosecutor, investigator, inquirer without additional verification; such sentence or decision can not pre-determine the guilt of persons, having earlier not participated in the criminal case under consideration.

1.1. The Industrial District Court of the City of Stavropol' by a decision of 21 May 2007 satisfied the suit of G.K.Chernyshova to V.D.Vlasenko and Ye.A.Vlasenko on recognition as valid preliminary buy-sell agreement of a house, on impelling to conclude the buy-sell agreement of this house and on recognition of the right of property on it, and rejected counter-claim on recognition of the abovementioned agreement invalid.

The resolution on institution of criminal proceedings in respect of G.K.Chernyshova on signs of the crime stipulated for by Section 4 of Article 159 "Swindling" of the Criminal Code of the Russian Federation, passed on 24 February 2009 by the investigator of the Chief Investigation Directorate at the Chief Directorate of Internal Affairs on the Stavropol' Territory upon application of Ye.A.Vlasenko on theft of his property, was abrogated as unlawful by Deputy Prosecutor of the Stavropol' Territory. Investigators of the Investigation Directorate of the Investigation Committee at the Prosecutor's Office of the Russian Federation on the Stavropol' Territory did not find grounds for institution of criminal proceedings.

By resolution of 16 April 2010, passed on the next application of Ye.A.Vlasenko by senior investigator of the Investigation Directorate at the Directorate of Internal Affairs on the City of Stavropol', criminal proceedings on signs of the crime stipulated for by Section 4 of Article 159 of the Criminal Code of the Russian Federation were instituted again. As it was indicated in the resolution, in 2007 G.K.Chernyshova committed theft of another's property in a particularly large amount by way of fraud, namely: using documents, wittingly fictitious for her, she registered in the Directorate of the Federal Registration Service on the Stavropol' Territory a house, belonging to V.D.Vlasenko, on her name.

Industrial District Court of the City of Stavropol', where G.K.Chernyshova lodged a complaint in the procedure of Article 125 of the Criminal Procedure Code of the Russian Federation, on 3 September 2010, with reference to Article 90 of this Code, abrogated the resolution on institution of criminal proceedings in respect of her, having noted that by decision of 21 May 2007, having entered into legal force, the same court, proceeding from circumstances established by it recognized G.K.Chernyshova's right of property on the disputed house, having rejected the counter-claim. Criminal Board of the Stavropol' Territorial Court also justified its refusal to satisfy cassation complaint of V.D.Vlasenko's and Ye.A.Vlasenko's lawyer by the need to observe the requirements of Article 90 of the Criminal Procedure Code of the Russian Federation, by virtue of which circumstances established by a court decision passed within the framework of civil judicial proceedings and having entered into legal force must be recognized by investigator without additional verification.

1.2. As the applicants claim in their complaint to the Constitutional Court of the Russian Federation, in the course of consideration of their civil case the court did not verify authenticity of the evidence presented by the plaintiff, and their applications on falseness and falsification of the evidence presented by her and their motions on demand of authentic documents were left by court without satisfaction.

Proceeding from this, they request to recognize Article 90 of the Criminal Procedure Code of the Russian Federation as contradicting Articles 19 (Section 1), 45, 46 and 52 of the Constitution of the Russian Federation in the part in which – within the meaning attributed to it by the law-applying practices – it does not admit holding of additional verification of circumstances, rousing doubts of a court, prosecutor, investigator, inquirer, when these circumstances have been established by court decision adopted within the framework of the civil judicial proceedings and having entered into legal force. By this, in the opinion of the applicants, requirements of the Constitution of the Russian Federation are violated, according to which in the Russian Federation State protection of human and civil rights and freedoms is guaranteed, the rights of the victims of crimes and abuses of power are guarded by law, and the State provides to the victims access to court and compensation of damage caused.

Thus, by virtue of Articles 74, 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the subject-matter for consideration by the Constitutional Court of the Russian Federation in the present case is Article 90 of the Criminal Procedure Code of the Russian Federation in the part envisaging that circumstances, established by a court decision adopted within the framework of the civil judicial proceedings and having entered into legal force, shall be recognized by a court, prosecutor, investigator, inquirer without additional verification.

2. According to the Constitution of the Russian Federation, judicial protection of his/her rights and freedoms shall be guaranteed to everyone; decisions and actions (or inaction) of bodies of State power, bodies of local self-government, public associations and officials may be appealed against in court (Article 46, Sections 1 and 2). The right to judicial protection pertains to the basic inalienable human rights and freedoms and at the same time appears to be a guarantee of all other rights and freedoms, it shall be recognized and guaranteed according to the universally recognized principles and norms of international law and in accordance with the Constitution of the Russian Federation and is secured on the basis of the

principles of justice, including independence of judges, their subordination only to the Constitution of the Russian Federation and federal law, conduction of judicial proceedings on the basis of controversy and equality of the parties concerned (Articles 17 and 18; Article 120, Section 1; Article 123, Section 3, of the Constitution of the Russian Federation).

The adduced provisions of the Constitution of the Russian Federation correspond to the injunctions of Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights, according to which everyone in the determination of his/her rights and obligations and for establishment of foundedness of criminal charge against him/her shall be entitled to a hearing by an independent and impartial tribunal with the observance of all requirements of justice, i.e. with granting on the basis of full equality of procedural guarantees of a fair trial. By virtue of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, fair trial carried out by an independent, impartial and competent tribunal established by law also contemplates binding character and feasibility of court decisions, which is connected with the requirements of legal certainty.

The abovementioned general principles of exercise of justice are extended on all types of the judicial proceedings fixed by the Constitution of the Russian Federation, its Article 118 (Section 2) – constitutional, civil, administrative and criminal and are common for them irrespective of the nature and peculiarities of material relations, determining the subject of examination in each type of the judicial proceedings, in the framework of which the citizens realize constitutional right to judicial protection.

These peculiarities, as well as the character of cases considered, the essence and significance of sanctions introduced and legal consequences of their prescription determine fixing in the federal law, with application to separate types of judicial proceedings and categories of cases, of ways and procedures of judicial protection, introducing which, the federal legislator is obliged to follow principles lying in the basis of courts' organization and their activity in exercise of justice,

including on the basis of delimitation of the types of judicial jurisdiction and with regard to the requirements of Articles 46-53, 118, 120, 123 and 125-128 of the Constitution of the Russian Federation (Judgments of the Constitutional Court of the Russian Federation of 28 May 1999 No. 9-П, of 21 March 2007 No. 3-П and of 17 January 2008 No. 1-П).

3. Constitutional principles of equality of rights, equality of all before the law and the court, as well as the principles of controversy and equality of the parties in the judicial proceedings, developing them (Article 17, Section 3; Article 19, Sections 1 and 2; Article 123, Section 3, of the Constitution of the Russian Federation), contemplate such a construction of the judicial proceedings in which the function of a court to resolve a case is separated from the functions of parties arguing before the court. Carrying out justice as its exclusive function, the court in all types of judicial proceedings, including criminal, must grant to the parties equal opportunities to dispute their positions and therefore can not accept exercise of their procedural functions (Judgments of the Constitutional Court of the Russian Federation of 28 November 1996 No. 19-П, of 14 February 2002 No. 4-П and of 5 February 2007 No. 2-П, Ruling of the Constitutional Court of the Russian Federation of 13 June 2002 No. 166-О).

At the same time, the subject-matter of examination in each type of judicial proceedings has its peculiarities, proceeding from which not only a competent court is determined, but also the specificity of procedural rules of proof in respective cases, including the procedure of presenting and examination of evidence, as well as grounds for release from proof. Bounds of discretion of the federal legislator in resolving these questions are broad enough – under the condition of observance of the constitutional principles of exercise of justice and corresponding international obligations of the Russian Federation common to all types of judicial proceedings.

3.1. According to the Criminal Procedure Code of the Russian Federation, court is not a body of criminal persecution, it does not appear on the side of prosecution or defense (Section 3 of Article 15), and the burden of proof of the

accusation and refutation of arguments brought to the defense of the suspect or accused lies on the party of accusation (Section 2 of Article 14); in this case all doubts in the guilt of the accused, which can not be eliminated in the order established by the present Code, are interpreted in his/her favour, and until full refutation of his/her innocence the accused continues to be considered innocent (Sections 1 and 3 of Article 14).

These prescriptions are based on the provisions of Articles 49 and 123 of the Constitution of the Russian Federation, following which and considering that presumption of innocence dictates acknowledgment by the court of all facts testifying in favour of an accused, until they are refuted by the prosecution side in a proper procedural form, the Criminal Procedure Code of the Russian Federation establishes requirements to proving of a person's guilt and to the assessment of the proof by the court which, according to its Article 17, is conducted by a judge, a jury, as well as a prosecutor, an investigator, an inquirer on their internal conviction based on the totality of evidence present in the criminal case, proceeding from the idea that no evidence has force established beforehand.

In their turn, civil procedure and arbitration procedure law proceed from the provision that circumstances, which a person participating in the proceedings refers to as a base of his/her claims and objections, must be proved by this person him-/herself (Section 1 of Article 56 of the Civil Procedure Code of the Russian Federation, Section 1 of Article 65 of the Arbitration Procedure Code of the Russian Federation).

General rules of distribution of the burden of proof, functioning in all types of judicial proceedings, contemplate release from proof of circumstances, entering in the subject of proof, to the number of which procedural legislation attributes circumstances having been established by a court decision on a case resolved earlier (Article 90 of the Criminal Procedure Code of the Russian Federation, Article 61 of the Civil Procedure Code of the Russian Federation, Article 69 of the Arbitration Procedure Code of the Russian Federation). In this ground of release from proof the prejudiciality manifests itself as an attribute of legal force of court

decisions, the binding force and feasibility of which as acts of the judicial power are determined by its prerogatives.

Recognition of prejudicial meaning of a court decision, being aimed at securing stability and general binding character of a court decision, exclusion of possible conflict of judicial acts contemplates that facts established by a court during consideration of one case are accepted by another court in another case in the same or other type of judicial proceedings until refuted, if they have significance for resolution of a case. By this prejudiciality serves as means of support of non-contradiction of judicial acts and secures functioning of the principle of legal certainty.

Investing of court decisions having entered into legal force with the quality of prejudiciality is a sphere of discretion of federal legislator, which could have resorted to other ways of securing non-contradiction of binding judicial acts in the legal system, but is not entitled not to establish these or other institutions necessary to achieve this goal. And the introduction of the institute of prejudice requires observance of balance between such constitutionally protected values as general binding character and non-contradiction of judicial acts, on the one hand, and independence of the judiciary and adversarial character of the judicial proceedings, on the other. Such a balance is guaranteed by establishing limits of prejudiciality's functioning and the procedure of its refutation.

The need to reconsider decisions, having entered into legal force, in this case is not denied, but on the contrary, it is contemplated, in order to avoid existence in the legal systems of court acts containing mutually excepting conclusions. Regulation of the institute of reconsidering erroneous court acts, having entered into legal force, corresponds with international law norms, also recognizing both binding character of execution of court acts (*res judicata*) and the need to correct judicial errors in cases, when there is information on new or newly revealed circumstances or if in the course of previous examination substantial breaches were made which affected the result of the hearings (Paragraph 2 of Article 4 of the

Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms).

Thus, both recognition and denial of prejudicial significance of final court decisions can not be absolute and have certain limits established by the procedural law. As the Constitutional Court of the Russian Federation has pointed out, exclusive in its essence possibility of overcoming finality of court acts having entered into legal force contemplates establishment of such particular procedures and conditions of their reconsideration which would answer first of all to the requirements of legal certainty, secured by recognition of legal force of court decisions, their irrefutability, which can be shaken with application to decisions, adopted in ordinary judicial procedures, if a new or a newly revealed circumstance or discovered fundamental breaches indisputably testify of a judicial error, without elimination of which by a competent court compensation of a damage caused is impossible (Judgments of 11 May 2005 No. 5-П, of 5 February 2007 No. 2-П and of 17 March 2009 N. 5-П, Ruling of 15 January 2008 No. 193-О-П).

This approach corresponds to the practice of the European Court of Hunan Rights, which assumes that deviation from the requirements of legal certainty may be justified by circumstances of essential and insurmountable nature and that reconsideration of a final court decision is possible only for correction of fundamental breach or improper exercise of justice (Judgments of 18 November 2004 on the case “Pravednaya vs Russia”, of 12 July 2007 on the case “Vedernikova vs Russia”and of 23 July 2009 on the case “Sutyazhnik vs Russia”).

3.2. The bounds of operation of prejudiciality of a court decision are determined objectively by the fact that circumstances established by a court within the framework of the subject-matter of its examination in their legal essence may have different meaning as an element of proof in another case, since the matters of proof in different types of judicial proceedings do not coincide, and the courts in their examination are limited by their competence within the framework of particular type of judicial proceedings.

That is why in criminal judicial proceedings the inter-branch prejudice may result in acceptance by a court of information on the presence or absence of an action or event, established in the procedure of civil judicial proceedings, but not its qualification as unlawful, which from the point of view of the criminal law can take place only in criminal judicial proceedings. For instance, decision on a civil case, placing civil law responsibility on a certain person, can not be accepted by other court in a criminal case as establishing guilt of this person of having committed criminally punishable action and in this sense does not have prejudicial significance for the criminal case. Other would be violation of constitutional rights of a citizen to be considered guilty only on accusatory sentence of a court and to be tried by a court, to the competence of which the case is ascribed by law.

The task of civil judicial proceedings in their constitutional meaning (Article 15, Section 1; Article 118, Section 2; Article 120, Section 1, of the Constitution of the Russian Federation) is resolution of disputes on a right and of other cases, ascribed to the jurisdiction of the courts of general jurisdiction and the courts of arbitration. In accordance with this, Section 4 of Article 61 of the Civil Procedure Code of the Russian Federation fixes that a sentence on a criminal case, having entered into legal force, is binding for a court, considering a case on civil law consequences of actions of a person, in respect of whom the sentence has been passed, on the questions whether these actions have taken place and whether they have been committed by this person. According to Section 4 of Article 69 of the Arbitration Procedure Code of the Russian Federation, the sentence on a criminal case, having entered into legal force, is binding for a court of arbitration on the questions of whether certain actions have taken place and whether they have been committed by a certain person.

But in the criminal judicial proceedings the question is resolved on the guilt of a person of commission of a crime and of his/her criminal punishment. For this court the circumstances which confirm signs of *corpus delicti*, established by the criminal law, would have significance; if these signs are not fixed in the law, the action can not be regarded as criminal. This also concerns the form of guilt as an

element of the subjective side of *corpus delicti*, which is not subject to establishment in a civil case. That is why the criminal law qualification of actions (inaction) of a person is determined exclusively within the framework of procedures envisaged by the criminal procedure law and can not be established in other types of judicial proceedings.

Introducing the rules of assessment of the evidence in the criminal judicial proceedings, the Criminal Procedure Code of the Russian Federation (Article 17) proceeds from the principle of freedom of assessment of the evidence, in which, *inter alia*, independence of court is embodied, considering which as a consequence of independence of judicial power, the federal legislator realizes his discretional powers when choosing particular forms and procedures of exercising justice, determines the limits of operation of the prejudicial force of court decisions, securing their general binding character, stability and non-contradiction. Fixing in the procedural law prejudicial significance of circumstances on a case considered earlier does not mean pre-determination of final conclusions of a court on a criminal case by court decision passed earlier, adopted in another type of judicial proceedings in other legal procedures.

3.3. Thus, institute of prejudice, being expression of the legislator's discretion in the choice of particular forms and procedures of judicial protection and aimed at securing of operation of legal force of a court decision, its general binding character and stability, at exclusion of possible conflict of different judicial acts, is subject to application with regard to the principle of freedom of assessment of evidence by a court, following from the constitutional principles of independence and self-sufficiency of the judicial power.

Accordingly, within the meaning of Article 90 of the Criminal Procedure Code of the Russian Federation in the system of norms of the procedural legislation, the circumstances established by a court decision, having entered into legal force, which completes consideration of a case in the framework of any type of judicial proceedings, have prejudicial significance for a court, prosecutor, investigator or inquirer on a criminal case in respect of a person, who's legal

position has been determined by a court act, earlier passed on another case. By virtue of objective and subjective bounds of operation of legal force of court decision for bodies carrying out criminal judicial proceedings, circumstances established by the court acts of other courts can not be binding, if by these acts the case was not resolved substantially or if they concerned facts appeared in civil judicial proceedings which have not been a subject-matter of examination and therefore can not be recognized established by a court act passed on its results.

4. The federal legislator is entitled to envisage various ways of refutation of a prejudice, which, however, can not be excluded from the sphere of judicial control from the point of view of their conformity to constitutional principles of independence of the court and binding character of court decisions.

For instance, with application to Article 90 of the Criminal Procedure Code of the Russian Federation in the previous wording, according to which prejudicial significance in criminal judicial proceedings of a sentence, having been passed earlier on a criminal case, could be refuted by bodies of criminal judicial proceedings on another criminal case with the help of other evidence examined in this case and circumstances confirmed by them, the Constitutional Court of the Russian Federation in the Ruling of 15 January 2008 No. 193-O-П came to a conclusion that this Article does not contemplate possibility of not taking into account, in the course of resolving a criminal case, circumstances, established by valid decisions of a court of arbitration on a civil case, which have entered into legal force, until they are not refuted by the party of prosecution in a proper court procedure, and the conclusions concerning factual circumstances which have been considered and established in court acts of a court of arbitration, carrying out civil judicial proceedings in accordance with competence determined by the Constitution of the Russian Federation and the Arbitration Procedure Code of the Russian Federation, if they substantially pre-determine the question of guilt or innocence of a person in the course of criminal judicial proceedings, are subject to examination and assessment in accordance with the general principles fixed in Article 49 of the Constitution of the Russian Federation.

In the process of realization of the adduced legal position of the Constitutional Court of the Russian Federation – with the aim to secure legal certainty and stability of court acts – amendments were inserted into Article 90 of the Criminal Procedure Code of the Russian Federation, according to which, in particular, circumstances established by a court decision, having entered into legal force, passed in the framework of civil judicial proceedings, are recognized by a court, prosecutor, investigator, inquirer without additional verification. In the system of norms envisaging the conditions and procedure of proving in criminal cases in the context of the provisions of Articles 49 and 118 (Section 2) of the Constitution of the Russian Federation and in the inter-connection with Article 61 of the Civil Procedure Code of the Russian Federation and Article 69 of the Arbitration Procedure Code of the Russian Federation this means that decisions on civil cases adopted in the procedure of civil judicial proceedings, having entered into legal force, can not be regarded as pre-determining conclusions of a court in criminal judicial proceedings of whether an action contains signs of a crime and of the guilt of an accused, which must be based on the whole totality of testimonies in the criminal case, including on pieces of information not examined earlier in the course of consideration of a civil case, showing at forgery or falsifying of proof, - the proof of this sort is examined in the procedures, established by the criminal procedure law and may further entail reconsideration of a civil case.

Circumstances of falsifying of the evidence as criminally punishable action do not constitute subject of proof for a civil case. These factual circumstances go beyond the limits of the objective bounds of the legal force of a court decision, passed in a civil judicial proceedings, and constitute a subject of proof in a criminal case, instituted on the signs of a respective crime, envisaged by the Criminal Code of the Russian Federation.

4.1. Proceeding from the idea that mechanisms of recognition and refutation of prejudicial force of court decisions, established by federal law, are subject to judicial control, including from the point of view of their conformity to constitutional principles of court’s independence and binding character of court

decisions, and regarding constitutional content of the right to court protection, reconsideration of court acts on newly revealed circumstances must be recognized as a unified way of refutation (overcoming) of a prejudice in all types of judicial proceedings; establishment by a sentence of a court of crimes against justice, including falsifying of the evidence, committed during consideration of an earlier completed case, pertains to the number of such circumstances.

The possibility of overcoming in these cases of the legal force of a court act by way of its reconsideration in the procedures envisaged by law secures balance of a general binding character of the legal force of a court act and the possibility to verify its lawfulness and foundedness, so that when judicial error is confirmed, prejudiciality of this decision could be overcome by way of its abrogation in the specially established procedures. Such an approach conforms both to the constitutional principles of exercise of justice and international obligations of the Russian Federation on securing the functioning of the principle of legal certainty in the Russian legal system.

Since within the framework of judicial protection of rights and freedoms appeal to court of decisions and actions (inaction) of any State bodies, including judicial, is not excluded, absence of the possibility to correct the consequences of erroneous court act does not accord with universal rule of effective restoration of rights through justice, meeting the requirements of fairness; institutional and procedural conditions of reconsideration of erroneous court acts must in any case secure both fair justice and procedural effectiveness, economy in the use of the means of judicial protection, exclude dragging out or unfounded renewal of court examination and by this – to guarantee legal certainty, based on recognition of legal force of court decisions, their irrefutability (Judgments of the Constitutional Court of the Russian Federation of 2 February 1996 No. 4-П, of 3 February 1998 No. 5-П, of 5 February 2007 No. 2-П and others, Ruling of the Constitutional Court of the Russian Federation No. 193-О-П).

In development of the prescriptions of Article 4 of the Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms,

procedural legislation of the Russian Federation (Paragraphs 2 and 3 of Section 2 of Article 392 of the Civil Procedure Code of the Russian Federation, Paragraphs 2 and 3 of Section 2 of Article 311 of the Arbitration Procedure Code of the Russian Federation) ascribes to the number of grounds of reconsideration of court acts on newly revealed circumstances, in particular, wittingly false testimony of a witness, wittingly false conclusion of an expert, wittingly wrong translation, falsifying of evidence, having entailed adoption of an unlawful or unfounded court act, crimes of the parties, other persons participating in the proceedings, their representatives, crimes of judges committed in the course of consideration and resolution of this case, which have been established by a court sentence, having entered into legal force.

4.2. As it follows from law-applying decisions adopted in respect of citizens-applicants in the present case, in civil judicial procedure where they appeared as defendants, the right of property of the plaintiff on the property having served as a subject of the dispute, was confirmed; and the authenticity of evidence presented by her, as well as foundedness of defendant's claims of their falseness was not verified by court. In such a case, within the meaning of Article 90 of the Criminal Procedure Code of the Russian Federation, for an investigator and a court in criminal judicial proceedings prejudicially established is the fact of lawful transition of property – until refutation of this fact in the course of criminal proceedings, instituted on the signs of falsification of evidence; on the basis of the sentence in this case later its previous legal assessment by a court in a civil procedure can be refuted as a lawful acquiring of the right of property; accordingly, an investigator can not and must not turn to the question which was a subject of proof in a civil case – on the lawfulness of transition of the right of property, he assesses only the presence of the signs of falsification of evidence (including evidence, having not been considered by court in a civil case) in connection with institution of criminal proceedings on this fact.

Consequently, in criminal law procedures an issue is examined, which did not enter in the subject of proof in the civil case, - on falsification of evidence namely

as criminally punishable action, which in case of its establishment may appear to be ground for reconsideration on newly revealed circumstances of the decision on the civil case.

Until in the course of criminal procedure the fact of falsification of the evidence and the guilt of a person in this crime are established on the basis of doubtless circumstances, the decision on the civil case must be interpreted in favour of the owner of property, because assumption of falsification of evidence as such can not refute the lawfulness of transition of the right of property. And even confirmation of the fact of falsification of evidence may turn to be not enough for reconsideration of decision on civil case, if other pieces of information established in the civil procedure allow to recognize transition of the right of property as lawful regardless of the fact of falsification.

Consequently, Article 90 of the Criminal Procedure Code of the Russian Federation can not be regarded as hindering investigation of forgery, falsification of evidence or other crime against justice committed by someone from among participants of the procedure (by a judge, a party, a witness and others) and, accordingly, making persons, participating in the civil proceedings, criminally answerable for the crimes committed, connected with its consideration and resolution.

Recognition of prejudicial significance of a court act, adopted in civil judicial proceedings and having entered into legal force, in the course of consideration of a criminal case can not hinder right and timely exercise of justice on criminal cases proceeding from the requirements of the Constitution of the Russian Federation, including the principle of presumption of innocence of a person accused of commission of a crime, which can be refuted only by way of procedures envisaged by the criminal procedure law and only within the framework of criminal judicial proceedings (Article 49 and Article 118, Section 2, of the Constitution of the Russian Federation).

Refutation of the prejudice of a court act adopted in the procedure of the civil judicial proceedings, on the ground of disagreement of an investigator (or a court),

carrying out criminal proceeding, with the conclusions of this court act alone (as it took place in an accordance with Article 90 of the Criminal Procedure Code of the Russian Federation in the previous wording) would allow to overcome legal force of a court decision in breach of the constitutional principle of the presumption of innocence and peculiarities of proof in the criminal procedure connected with it, to ignore founded doubts concerning guilt of a person following from the prejudice (if the decision on a civil case speaks in favour of his/her innocence).

Refusal of an inquirer, investigator or a prosecutor, carrying out criminal judicial proceedings, to recognize functioning of a prejudice as a quality of legal force of a court decision, adopted in the procedure of civil judicial proceedings, would also mean, within the meaning of the legal position, expounded in the Judgment of the Constitutional Court of the Russian Federation of 17 March 2009 No. 5-П, overcoming of court decisions, having entered into legal force, by administrative bodies, which does not conform to the very nature of justice, which is carried out only by court, and the constitutional principle of independence of judicial power and the court.

4.3. Thus, the provisions of Article 90 of the Criminal Procedure Code of the Russian Federation, envisaging that circumstances established by a court decision, adopted within a framework of civil judicial proceedings and having entered into legal force, shall be recognized by a court, prosecutor, investigator, inquirer without additional verification ,- in their constitutional law sense, revealed by the Constitutional Court of the Russian Federation in the present Judgment,- do not contradict the Constitution of the Russian Federation.

5. Assessing in the course of constitutional judicial proceedings both the literal meaning of examined norm and the meaning attributed to it by an official and other interpretation (including interpretation in a particular case) or a prevailing law-applying practices, as well as proceeding from its place in the system of norms, as requires Section 2 of Article 74 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation recognizes a norm as constitutional (conforming to

the Constitution of the Russian Federation) or unconstitutional (not conforming to the Constitution of the Russian Federation) and by this reveals its constitutional or unconstitutional sense, which is reflected in the wording of the resolution part of a judgment (with application to a judgment passed as a result of consideration of a complaint of citizen, in accordance with Section 1 of Article 100 of this Federal Constitutional Law – on recognition of a law or its individual provisions conforming to the Constitution of the Russian Federation (Paragraph 1) or not conforming to the Constitution of the Russian Federation (Paragraphs 2 and 3).

At the same time, if a court of general jurisdiction, court of arbitration, having applied a norm in a particular case, gave it interpretation, not conforming to the Constitution of the Russian Federation, i.e. attributed to it unconstitutional meaning, as a result of which constitutional rights of a citizen were violated, the Constitutional Court of the Russian Federation, manifesting reasonable restraint, predetermined by its constitutional powers and place in the system of separation of powers, is entitled, as it follows from Articles 10, 118 and 125 of the Constitution of the Russian Federation and Articles 3, 36, 74, 75, 86, 96, 97 and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", - not eliminating the norm contested by the applicant from the legal system, because it can substantially affect its functioning as a whole and create difficulties in application of law, in particular, determined by rise in such case of a lacuna in legal regulation, - to eliminate uncertainty in the interpretation of this norm from the point of view of its conformity to the Constitution of the Russian Federation, having recognized it as not contradicting the Constitution of the Russian Federation in the meaning revealed in the outcome of constitutional judicial proceedings, having determined constitutional conditions of its functioning and application, beyond which the norm looses its constitutionality.

Legal force of a decision of the Constitutional Court of the Russian Federation, in which constitutional law meaning of a norm is revealed and by this the uncertainty in its interpretation from the point of view of its conformity to the Constitution of the Russian Federation is eliminated, determines impossibility of

application of this norm (and therefore, discontinuation of functioning) in any other interpretation, diverging from its constitutional law meaning, revealed by the Constitutional Court of the Russian Federation. Other – in breach of Article 125 (Sections 4 and 6) of the Constitution of the Russian Federation and Section 3 of Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" – would mean possibility of application of the norm in its previous understanding, not conforming to the Constitution of the Russian Federation and, consequently, entailing violation of constitutional rights of citizens, including the applicant.

By virtue of this Judgment of the Constitutional Court of the Russian Federation, revealing constitutional law meaning of a legal norm and excluding any other its interpretation and application as not conforming to the Constitution of the Russian Federation and, consequently, violating constitutional rights of citizens, has juridical consequences, envisaged by Paragraphs 2 and 3 of Section 1 of Article 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", guaranteeing reconsideration of the case of the applicant by a competent body according to the established procedure (Judgments of the Constitutional Court of the Russian Federation of 21 January 2010 No. 1-П and of 26 February 2010 No. 4-П, Ruling of the Constitutional Court of the Russian Federation of 11 November 2008 No. 556-O-P).

The Constitutional Court of the Russian Federation has repeatedly underlined that law-applying decisions, based on an act, to which in the course of application in a particular case a court of general jurisdiction or a court of arbitration attributed interpretation, not conforming to the Constitution of the Russian Federation, i.e. diverging with its constitutional law meaning, later revealed by the Constitutional Court of the Russian Federation, are subject to reconsideration in accordance with the legal position of the Constitutional Court of the Russian Federation in the procedure established by law. Refusing such reconsideration, the courts of general jurisdiction and the courts of arbitration in fact would insist on the interpretation of an act, attributing to it other meaning than revealed as a result of review in

constitutional judicial proceedings, i.e. not conforming to the Constitution of the Russian Federation and by this would overcome the legal force of the Judgment of the Constitutional Court of the Russian Federation which, according to Articles 118, 125 126, 127 and 128 of the Constitution of the Russian Federation, they are not entitled to do (Judgment of 25 January 2001 No. 1-П, Rulings of 6 February 2003 No. 34-O, of 5 February 2004 No. 78-O, of 27 May 2004 No. 211-O, of 9 July 2004 No. 242-O, of 1 November 2007 No. 827-O-П and others).

Concluding from the above and pursuant to Article 6, Section 2 of Article 71, Articles 72, 74, 75, 78, 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 provisions of Article 90 of the Criminal Procedure Code of the Russian Federation as not contradicting the Constitution of the Russian Federation to the extent to which within its constitutional law meaning in the system of legal regulation in force these provisions mean that:

factual circumstances, established by a court act, having entered into legal force and having resolved a case in essence in the procedure of civil judicial proceedings, have prejudicial significance for a court, prosecutor, investigator, inquirer in a criminal case being in their proceedings, i.e. when in the criminal judicial proceedings a question is considered on the rights and duties of a person, whose legal position has already been determined by court act passed earlier;

factual circumstances, established by a court act, having entered into legal force and having resolved a case in essence in the procedure of civil judicial proceedings, in themselves do not predetermine the court's conclusions on the guilt of an accused in the criminal proceedings, which is established on the basis of the whole totality of evidence, including evidence, not examined in the course of civil judicial proceedings, subject to consideration the procedures established by the criminal procedure law, which can entail reconsideration of the civil case on newly revealed circumstances;

recognition in the course of consideration of a criminal case prejudicial significance of factual circumstances, established by a court act, having entered into legal force and having resolved a case in essence in the procedure of civil judicial proceedings, can not hinder consideration of a criminal case on the basis of the principle of the presumption of innocence of a person, accused of commission of a crime, which may be refuted only through procedures, envisaged by the criminal procedure law and only within the framework of criminal judicial proceedings;

factual circumstances, having not been ground for resolution of a case in essence in the procedure of civil judicial proceedings, in the presence in them of the signs of *corpus delicti* of a crime against justice, are subject to verification at all stages of criminal judicial proceedings, including institution and investigation of criminal proceedings, including on the basis of evidence, having not been examined earlier in a civil or arbitration procedure.

2. The constitutional law meaning of the provisions of Article 90 of the Criminal Procedure Code of the Russian Federation, revealed in the present Judgment, is generally binding and excludes any other interpretation of them in the law-applying practices.

3. The law-applying decisions on the case of V.D.Vlasenko and Ye.A.Vlasenko, passed on the basis of the provisions of Article 90 of the Criminal Procedure Code of the Russian Federation in the interpretation diverging from their constitutional law meaning, revealed in the present Judgment, are to be reconsidered according to the established procedure.

4. The present Judgment shall be final, not subject to any appeal, it shall come into force immediately upon pronouncement, it shall be directly applicable and shall not require confirmation by other bodies and officials.

5. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the present Judgment shall be subject to immediate publication in Rossiyskaya Gazeta and the Collection of

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

The Constitutional Court
of the Russian Federation

No. 30-П