

IN THE NAME OF THE RUSSIAN FEDERATION
The Constitutional Court of the Russian Federation

Judgment
of 6th December, 2013 No. 27-II

In the case on the review of constitutionality of the provisions of Article 11 and Items 3 and 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation in connection with the request of the Presidium of Leningrad Circuit Military Court

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, N.V.Seleznev, O.S.Khokhryakova, V.G.Yaroslavtsev,

in the attendance of the Chairman of Leningrad Circuit Military Court D.V.Kuvshinnikov, the Plenipotentiary Representative of the State Duma to the Constitutional Court of the Russian Federation D.F.Vyatkin, the Representative of the Council of Federation PhD in Law A.S.Salomatkin, the Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov,

guided by Article 125 (Section 4) of the Constitution of the Russian Federation, Item 3¹ of Section 1, Sections 3 and 4 of Article 3, Section 1 of Article 21, Articles 36, 74, 101, 102 and 104 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation",

in an open hearing considered the case on the review of constitutionality of the provisions of Article 11 and Items 3 and 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation".

The reason for the consideration of the case was the request of the Presidium of Leningrad Circuit Military Court. The ground for the consideration of the case

was the discovered uncertainty of whether the contested legislative provisions are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur S.P.Mavrin, statements by parties' representatives, interventions by representatives invited to the hearing: Judge of the Supreme Court of the Russian Federation K.S.Zhudro for the Supreme Court of the Russian Federation, Ye.A.Borisenko for the Ministry of Justice of the Russian Federation, T.A.Vasilyeva for the Prosecutor General of the Russian Federation, having examined submitted documents and other materials, the Constitutional Court of the Russian Federation

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

1. In accordance with Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation to the new circumstances being grounds for reconsideration of judicial decisions having entered into legal force appertain such circumstances, having arisen after adoption of court resolution and having substantial significance for the correct resolution of the case, as recognition by the Constitutional Court of the Russian Federation as not conforming to the Constitution of the Russian Federation of a law applied in a particular case, in connection with adoption of the decision on which the petitioner addressed the Constitutional Court of the Russian Federation (Item 3), and establishment by the European Court of Human Rights of breach of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in the course of consideration of a particular case by court, in connection with adoption of the decision on which the petitioner appealed to the European Court of Human Rights (Item 4).

Constitutionality of Items 3 and 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation is contested by the Presidium of Leningrad Circuit Military Court in the interconnection with Article 11 of this Code, and actually – with its provisions, according to which court is obliged to resolve civil cases on the basis of the Constitution of the Russian Federation, normative legal acts of the President of the Russian Federation, normative legal

acts of the Government of the Russian Federation, normative legal acts of federal bodies of State power of the Russian Federation, constitutions (charters), laws, other normative legal acts of bodies of State power of subjects of the Russian Federation, normative legal acts of bodies of local self-government (Section 1); at this, if international treaty of the Russian Federation establishes other rules than those provided for by law, court when resolving a civil case applies the rules of an international treaty (Section 4).

The said legislative provisions are subject, in the opinion of the Presidium of Leningrad Circuit Military Court, to application when it considers cassation complaint of the commander of military unit 41 480 on appellate ruling of Leningrad Circuit Military Court of 15th November, 2012 upon complaint of K.A.Markin against refusal to reconsider on new circumstances judicial decision passed on the civil case on his application on contesting actions of the commander of the indicated military unit connected with refusal to grant nursing leave until child's attainment of the age of 3.

1.1. K.A.Markin's application on recognition of actions of the commander of military unit 41 480 as unlawful was left without satisfaction by the decision of Pushkin Garrison Military Court of 14th March, 2006 with reference to absence of legislatively established right of male military servicemen to granting of a nursing leave until child's attainment of the age of 3, as well as to non-provability of actual applicant's looking after a child without maternal care. The decision of court of the first instance was left unchanged by ruling of Leningrad Circuit Military Court of 27th April, 2006; obtaining on demand of the civil case for consideration in court session of supervisory instance on supervisory complaint of K.A. Markin was also rejected.

K.A.Markin's complaints against violation of his constitutional rights by the provisions of Articles 13 and 15 of the Federal Law "On State Allowances to Citizens Having Children", Articles 10 and 11 of the Federal Law "On the Status of Military Servicemen", Article 32 of the Statute on the Order of Doing Military Service and Items 35 and 44 of the Statute on Prescription and Payment of State

Allowances to Citizens Having Children, applied by courts of general jurisdiction in his case, were recognized by the Constitutional Court of the Russian Federation as not answering the criterion of admissibility. Dismissing these complaints by Ruling of 15th January, 2009, the Constitutional Court of the Russian Federation, proceeding from the notion that inadmissibility of combination by male military servicemen, doing military service on contract, of the fulfillment of official duties and nursing leave for upbringing of small children is determined by the specific character of legal status of military servicemen and conforms both to voluntary character of concluding contract on doing military service and constitutionally significant goals of restriction of human and civil rights and freedoms (Article 55, Section 3, of the Constitution of the Russian Federation), perceived no violation of petitioner's constitutional rights in his concrete case, as well as, bearing in mind fairly limited participation of Russian women in doing military service and particular, connected with maternity, social role of a female in society, established absence of breach of the principle of equality of human and civil rights and freedoms in the context of equality of rights of men and women.

The European Court of Human Rights, where K.A.Markin addressed with a complaint against refusal of Russian authorities to grant him, during the period of doing military service on contract, nursing leave until child's attainment of the age of 3, established breach by the authorities of the Russian Federation in relation to the petitioner of Article 14 "Prohibition of discrimination" in aggregate with Article 8 "Right to respect for private and family life" of the Convention for the Protection of Human Rights and Fundamental Freedoms. As follows from the judgment of the Grand Chamber of the European Court of Human Rights of 22nd March, 2012 on the case "Konstantin Markin vs. Russia", exclusion by the Russian legislation of male military servicemen from the number of persons having the right to be granted nursing leave, whereas female military servicemen enjoy this right, can not be regarded as reasonably or objectively well-founded; depriving male military servicemen of the right to be granted nursing leave exclusively on the sign of their sexual belonging, respective legislative provisions establish

general restriction, automatically applied to all military servicemen of male sex, irrespective of the position in the Armed Forces occupied by them, possibility of their replacement or a concrete situation, which is not based on specific requirements of the military service and goes beyond the bounds of the State's discretion in questions appertaining both to national security as a whole and to the Armed Forces.

Refusing to satisfy K.A.Markin's application on reconsideration of the decision of Pushkin Garrison Military Court of 14th March, 2006 on new circumstances, to which Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation ascribes establishment by the European Court of Human Rights of breach of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in the course of court consideration of a concrete case, in connection with adoption of a decision on which the petitioner appealed to the European Court of Human Rights, Saint-Petersburg Garrison Military Court, having accepted the jurisdiction of the abolished Pushkin Garrison Military Court, in the ruling of 30th August, 2012 pointed out that nursing leave had actually been granted to K.A.Markin, compensation of moral damage adjudged by the judgment of the Grand Chamber of the European Court of Human Rights of 22nd March, 2012 had been paid, therefore adoption in relation to him of any other special measures to execute this resolution is not required; besides, further proceedings on this civil case would not pursue the object of restoration of individual rights of K.A.Markin, so far as his son had already attained the age exceeding 3 years and he himself had left military service.

Leningrad Circuit Military Court disagreed with the conclusions of court of the first instance, having considered that by virtue of Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation it was obliged to reconsider on new circumstances the decision of Pushkin Garrison Military Court of 14th March, 2006, and by appellate ruling of 15th November, 2012 abrogated the ruling of Saint-Petersburg Garrison Military Court of 30th August, 2012, satisfied respective K.A.Markin's application, abrogated the decision of Pushkin Garrison

Military Court of 14th March, 2006 and submitted the case for consideration to Saint-Petersburg Garrison Military Court. Upon cassation complaint of the commander of military unit 41 480 on the indicated appellate ruling, the judge of Leningrad Circuit Military Court decided to obtain the case on demand from court of the first instance (ruling of 20th December, 2012).

Presidium of Leningrad Circuit Military Court, where by ruling of the judge of the same Court of 9th January, 2013 cassation complaint together with the case was submitted for consideration in court session of the court of cassation instance, came to the conclusion of presence of uncertainty in the question of constitutionality of Items 3 and 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation in the interconnection with Article 11 of this Code, suspended the proceedings on the case and petitioned the Constitutional Court of the Russian Federation with respective request (resolution of 30th January, 2013).

As is indicated in the request, the contested legislative provisions contradict Article 15 of the Constitution of the Russian Federation to the extent to which they admit reconsideration of a judicial decision having entered into legal force in the presence of opposed legal positions of the Constitutional Court of the Russian Federation and the European Court of Human Rights with regard to conformity of the norms of national legislation, applied in the course of consideration of a concrete case, to the provisions of the Constitution of the Russian Federation and the Convention for the Protection of Human Rights and Fundamental Freedoms, thereby creating obstacles for the correct resolution of the case.

1.2. By virtue of Articles 74, 101 and 102 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation upon request of a court reviews constitutionality of normative provisions contested by it in the procedure of concrete control of norms only in the part in which they are subject to application in the case being in the proceedings of this court, appraising both the literal meaning of these provisions and the meaning attributed to them by an official and other interpretation, as well

as the prevailing law-applying practices and considering their place in the system of norms.

In K.A.Markin's case, being in the proceedings of Leningrad Circuit Military court, only breach of the provisions of the Convention for Protection of Human Rights and Fundamental Freedoms in the course of consideration of this case, established by the judgment of the Grand Chamber of the European Court of Human Rights of 22nd March, 2012, may appear as the new circumstance which is a ground for reconsideration of the decision of Pushkin Garrison Military Court of 14th March, 2006 having entered into legal force. Such a ground is fixed in Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation. As far as Item 3 of Section 4 of the same Article is concerned, in this case the Constitutional Court of the Russian Federation is not entitled to review its constitutionality without connection with a concrete case, i.e. in the procedure of abstract control of norms, since the petitioner does not belong to the number of subjects, who in accordance with Article 125 (Section 2) of the Constitution of the Russian Federation and Article 84 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" are entitled to address the Constitutional Court of the Russian Federation with requests of this kind. Accordingly, the proceeding on the present case in this part by virtue of Item 2 of Section 1 of Article 43 and Article 68 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" is subject to discontinuance.

At the same time, taking into account that when resolving concrete case in accordance with Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation in the system unity with Sections 1 and 4 of its Article 11, in connection with which the Presidium of Leningrad Circuit Military Court petitioned the Constitutional Court of the Russian Federation, execution of the judgment of the European Court of Human Rights may turn to be linked to refusal to apply provisions of the legislation of the Russian Federation, in relation to which the Constitutional Court of the Russian Federation earlier came to the conclusion about absence of violation of constitutional rights of the petitioner by

them in the indicated concrete case, exclusion of Item 3 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation from the subject-matter of consideration by the Constitutional Court of the Russian Federation does not hinder to appraise constitutionality of other legislative provisions contested in the request exactly in the context of possible collisions between conclusions of the Constitutional Court of the Russian Federation and the European Court of Human Rights and thereby – to appraise influence of the decisions of the Constitutional Court of the Russian Federation on the possibility of reconsideration of a judicial decision having entered into legal force on such a ground as establishment by the European Court of Human Rights of a breach of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in the course of consideration of a concrete case by court, in connection with adoption of a decision on which the petitioner appealed to the European Court of Human Rights.

Thus, Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation in the interconnection with Sections 1 and 4 of its Article 11 are subject-matter of consideration by the Constitutional Court of the Russian Federation in the present case to the extent to which they serve for court of general jurisdiction as ground for adoption of a decision on reconsideration of a judicial decision having entered into legal force as a consequence of establishment by the European Court of Human Rights, having resolved petitioner's case, of breach in relation to him of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in the presence of a decision of the Constitutional Court of the Russian Federation, containing a conclusion about absence of violation in the concrete case of constitutional rights of the same petitioner by provisions of the legislation of the Russian Federation, application of which, in the opinion of the European Court of Human Rights, leads to restriction of the rights of persons falling under operation of these legislative provisions, incompatible with requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms.

2. According to Article 46 (Section 3) of the Constitution of the Russian Federation, everyone shall have the right in accordance with international treaties of the Russian Federation to appeal to interstate bodies for the protection of human rights and freedoms if all available internal means of legal protection have been exhausted. Such a body is, in particular, the European Court of Human Rights, which has been set up, as follows from the Convention for the Protection of Human Rights and Fundamental Freedoms, in order to ensure the observance of engagements undertaken by each State having ratified this Convention, and resolves questions relating to interpretation and application of its provisions and Protocols to it, including in the course of consideration of individual complaints (Articles 19, 32 and 34), and the High Contracting Parties undertake to abide by its final judgments (Article 46).

The Russian Federation, having ratified the Convention for the Protection of Human Rights and Fundamental Freedoms, which thus, by virtue of Article 15 (Section 4) of the Constitution of the Russian Federation, has entered the legal system of Russia as its integral part, recognized *ipso facto* and without special agreement the jurisdiction of the European Court of Human Rights as binding on the issues of interpretation of the provisions of this Convention and Protocols thereto in cases of their supposed breach by the Russian Federation (Article 1 of the Federal Law of 30th March, 1998 No. 54-Φ3 “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto”).

Proceeding from this, final judgment of the European Court of Human Rights, adopted on the outcome of consideration of a complaint of a person who claimed that was a victim of violation on the part of the Russian Federation of his rights recognized by the Convention for the Protection of Human Rights and Fundamental Freedoms or Protocols thereto, in the part establishing respective violation in relation to this person and adjudging to him in case of necessity just compensation (Articles 34 and 41 of the Convention), is unconditionally subject to execution. One of the procedural guarantees of ensuring execution of a judgment

of the European Court of Human Rights in the indicated part by the Russian Federation is Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation, according to which a judicial decision having entered into legal force may be reconsidered upon application of an interested person in view of appearance of a new circumstance, which in this case is recognized final judgment of the European Court of Human Rights, establishing breach in relation to this person of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in the course of consideration of his case.

3. Within the meaning of Articles 1 (Section 1), 2, 15 (Section 2), 17 (Section 2), 18, 45 (Section 1), 46 (Sections 1 and 2), 52, 53, 55 and 118 of the Constitution of the Russian Federation, protection of human and civil rights and freedoms, including judicial protection, guaranteed to everyone and being obligation of the State, the right to which belongs to fundamental inalienable human rights and freedoms and simultaneously appears as a guarantee of all other rights and freedoms, can not be recognized efficacious, if a court act or act of another authorized body, passed with the aim of restoration of violated rights, is not executed in time.

Hence, as the Constitutional Court of the Russian Federation pointed out in the Judgment of 26th February, 2010 No. 4-II, a person, in relation to whom breach of the Convention for the Protection of Human Rights and Fundamental Freedoms was established by the European Court of Human Rights, must in any case have opportunity to appeal to a competent court of the Russian Federation with application on reconsideration of a court act having served the reason for sending complaint to the European Court of Human Rights and be sure that his application will be considered; in its turn, the decision of a competent court on the possibility to reconsider respective court act – bearing in mind the necessity to take concrete measures of individual character with the aim to restore violated rights of the petitioner – must be based on thorough and full consideration of his arguments, as well as circumstances of a concrete case.

The Supreme Court of the Russian Federation adheres to analogous point of view as applied to the results of the procedure of reconsideration of a court act in connection with establishment of breach of the Convention for the Protection of Human Rights and Fundamental Freedoms in relation to the petitioner by the European Court of Human Rights: having referred to the provisions of its Article 46, interpreted with Recommendations of the Committee of Ministers of the Council of Europe of 19th January, 2000 R (2000) 2 in mind, by virtue of which not any breach of provisions of the Convention or Protocols thereto by the Russian Federation, established by the European Court of Human Rights, is ground for reconsideration of a court act in view of new circumstances, it explained that in the course of consideration by a court of the question on the need to reconsider a court act causal connection is taken into account between breach of the Convention or Protocols thereto, established by the European Court of Human Rights, and adverse consequences which the petitioner continues to experience, and that a court act is subject to reconsideration in the event if the petitioner continues to experience adverse consequences of such an act, and just compensation paid to him, adjudged by the European Court of Human Rights in execution of Article 41 of the Convention, or other means, not connected with reconsideration, do not ensure restoration of violated rights and freedoms (Item 17 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 27th June, 2013 No. 21 “On Application of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4th November, 1950 and Protocols Thereto by Courts of General Jurisdiction”).

In the course of the proceeding on reconsideration of a judicial decision having entered into legal force in the procedure of Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation court of general jurisdiction, obliged to be subordinate only to the Constitution of the Russian Federation and federal law (Article 120, Section 1, of the Constitution of the Russian Federation) and resolve civil cases on the basis of the Constitution of the Russian Federation, international treaties of the Russian Federation and the

legislation of the Russian Federation (Section 1 of Article 11 of the Civil Procedure Code of the Russian Federation), can come to the conclusion about impossibility of execution of a judgment of the European Court of Human Rights without refusal to apply provisions of the legislation of the Russian Federation, earlier recognized by the Constitutional Court of the Russian Federation as not violating constitutional rights of the petitioner in his concrete case. In such a case, taking into account the fact that human and civil rights and freedoms fixed by the Constitution of the Russian Federation are, in essence, the same rights and freedoms that are recognized by the Convention for the Protection of Human Rights and Fundamental Freedoms, the question arises before court of general jurisdiction on constitutionality of the indicated legislative provisions, having entailed breach of respective provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in their interpretation by the European Court of Human Rights.

3.1. As is pointed out in the Judgment of the Constitutional Court of the Russian Federation of 16th June, 1998 No. 19-II, by virtue of Articles 4, 15, 18 19, 46, 118, 120, 125 and 126 of the Constitution of the Russian Federation, conclusions of courts of general jurisdiction about unconstitutionality of some or other legislative provisions may not in themselves serve as ground for their official recognition as not conforming to the Constitution of the Russian Federation and losing legal force; the Constitution of the Russian Federation places such a power on the Constitutional Court of the Russian Federation, and exactly the Constitutional Court of the Russian Federation must resolve the question of conformity to the Constitution of the Russian Federation of legislative provisions, constitutionality of which is called in question by court of general jurisdiction which petitioned it.

From the adduced legal position it follows that revelation of unconstitutional legislative provisions and their elimination from the number of operating legal norms can be only aggregate result of interaction of courts of different kinds of jurisdiction, bearing in mind delimitation of their competence contemplating, on

the one hand, realization by court of general jurisdiction of the power to put question of constitutionality of respective norms before the Constitutional Court of the Russian Federation, and on the other – obligation of the Constitutional Court of the Russian Federation to finally resolve this question.

Accordingly, Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation in the interconnection with Sections 1 and 4 of its Article 11 may not be regarded as hindering court of general jurisdiction, carrying out proceeding on reconsideration of a judicial decision having entered into legal force upon application of a person, in relation to whom breach of the Convention for the Protection of Human Rights and Fundamental Freedoms, determined by application in his case of provisions of the legislation of the Russian Federation, was established by the European Court of Human Rights, to suspend proceedings and petition the Constitutional Court of the Russian Federation with a request to review their conformity to the Constitution of the Russian Federation.

Passing in such cases of a decision by court of general jurisdiction on the outcome of consideration of application on reconsideration of a judicial decision having entered into legal force in the procedure of Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation without prior petition to the Constitutional Court of the Russian Federation would mean that in the practice of courts of general jurisdiction the possibility is admitted of different appraisal of constitutionality of the same legislative provisions and thereby, in violation of the Constitution of the Russian Federation, including its Articles 3, 4, 15 and 76, doubt is cast on the supremacy of the Constitution of the Russian Federation, possessing in the legal system of the Russian Federation the higher legal force in relation to any legal acts operating on the territory of the Russian Federation.

3.2. Neither can Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation in the interconnection with Sections 1 and 4 of its Article 11 be regarded as not allowing court of general jurisdiction to begin proceeding on reconsideration on new circumstances of a judicial decision on a civil case having entered into legal force, in connection with adoption of a decision

on which the petitioner appealed to the European Court of Human Rights, in case when prior to passing by the European Court of Human Rights of a final judgment, establishing breach of the Convention for the Protection of Human Rights and Fundamental Freedoms in the course of consideration of this case, complaint of the same petitioner to the Constitutional Court of the Russian Federation against violation of his constitutional rights by legislative provisions applied in this case by court of general jurisdiction was recognized as not answering the criterion of admissibility.

Within the meaning of Article 125 (Section 4) of the Constitution of the Russian Federation and the provisions of Item 3 of Section 1 of Article 3, Item 2 of Section 1 of Article 43, Articles 96 and 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, rendering it concrete, the Constitutional Court of the Russian Federation, recognizing a complaint of a citizen as not answering the criterion of admissibility, adopts a ruling in which it gives appraisal of the right of this citizen to petition the Constitutional Court of the Russian Federation in connection with a concrete case, not predetermining thereby possible appraisal of constitutionality of contested legislative provisions.

As the Constitutional Court of the Russian Federation has pointed out in the Ruling of 13th January, 2000 No. 6-O, the status of the Constitutional Court of the Russian Federation does not contemplate appeal of decisions adopted by it, since other would not conform to its nature as a body of constitutional control. From this, however, it does not follow that presence of a ruling of the Constitutional Court of the Russian Federation, in which a conclusion is contained about absence of violation of constitutional rights of petitioner by legislative provisions contested by him, applied by court in his concrete case, excludes petition to the Constitutional Court of the Russian Federation in the appropriate procedure of any of authorized subjects, including courts of general jurisdiction, with a demand to verify constitutionality of the same legislative provisions.

In this sense, taking into consideration that the Constitutional Court of the Russian Federation passes decision on a case appraising both the literal meaning of

a contested norm and the meaning attributed to it by an official and other interpretation or the prevailing law-applying practices, as well as proceeding from its place in the system of norms, the conclusion about violation of the petitioner's rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms by the provisions of Russian legislation applied in his concrete case, contained in the final judgment of the European Court of Human Rights, may testify to uncertainty in the question of conformity of these legislative provisions to the Constitution of the Russian Federation, which, in its turn, may be ground – in the presence of an appropriate petition – for institution of constitutional judicial proceedings.

In such cases the fact that earlier the Constitutional Court of the Russian Federation recognized a citizen's complaint as not answering the criterion of admissibility in connection with absence of violation of his constitutional rights by legislative provisions applied in his concrete case may not serve obstacle for admission by it for consideration of a request of court of general jurisdiction, which upon application of the same citizen in the procedure of Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation carries out reconsideration of a judicial decision having entered into legal force, based on these legislative provisions, which the European Court of Human Rights gave appraisal of as entailing breach of the Convention for the Protection of Human Rights and Fundamental Freedoms. At this, if in the course of constitutional judicial proceedings legislative provisions under consideration will be recognized as not contradicting the Constitution of the Russian Federation, the Constitutional Court of the Russian Federation – bearing in mind that for court of general jurisdiction refusal from reconsideration of a judicial decision having entered into legal force as a procedural stage conditioned, in particular, by passing of a judgment of the European Court of Human Rights is excluded in any event, – within the framework of its competence determines possible constitutional means of realization of the judgment of the European Court of Human Rights.

Concluding from the above and pursuant to Article 6, Section 2 of Article 71, Articles 72, 74, 75, 78, 79, 100 and 104 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 Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation in the interconnection with Sections 1 and 4 of its Article 11 as not contradicting the Constitution of the Russian Federation, in so far as within its constitutional-law meaning in the system of operating legal regulation these legislative provisions do not hinder court of general jurisdiction to begin, upon application of a citizen, whose complaint to the Constitutional Court of the Russian Federation against violation of his constitutional rights and freedoms was earlier recognized as not answering the criterion of admissibility, proceeding on reconsideration on new circumstances of a judicial decision having entered into legal force in connection with establishment by the European Court of Human Rights of breach of provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in relation to this citizen in the course of consideration of respective civil case by court of general jurisdiction.

Should court of general jurisdiction come to the conclusion about impossibility of execution of the judgment of the European Court of Human Rights without recognition as not conforming to the Constitution of the Russian Federation of legislative provisions, concerning which the Constitutional Court of the Russian Federation earlier established absence of violation by them of constitutional rights of the petitioner in a concrete case, it is entitled to suspend proceeding and petition the Constitutional Court of the Russian Federation with a request to review constitutionality of these legislative provisions.

2. To discontinue proceedings on the present case in the part related to review of constitutionality of Item 3 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation.

3. The present 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 confirmation by other authorities and officials.

4. The present Judgment is subject to immediate publication in *Rossiyskaya Gazeta*, the Collection of Laws of the Russian Federation and on the official Internet-portal of legal information (www.pravo.gov.ru.) 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. 27-II