

In the name of the Russian Federation

The Russian Federation Constitutional Court composed of Mr G.A. Zhilin, *presiding judge*, Mr Yu.M. Danilov, Ms L.M. Zharkova, Mr V.D. Zorkin, Mr S.M. Kazantsev, Mr M.I. Kleandrov, Mr N.V. Melnikov, Mr N.V. Seleznev, Mr V.G. Strekozov, *judges*,

in attendance of Mr I.A. Yashkov, representative of Mr A.A. Doroshok, *lawyer*; Mr A.V. Kiryanov and Ms E.V. Kiryanova, representatives of Ms E.Yu. Fedotova, *lawyers*; Mr A.N. Kharitonov, permanent representative of the State Duma¹ at the Russian Federation Constitutional Court; Ms E.V. Vinogradova, Doctor of Juridical Sciences, representative of the Federation Council², Mr M.V. Krotov, Plenipotentiary Representative of the Russian Federation President at the Russian Federation Constitutional Court,

pursuant to Article 125 § 4 of the Russian Federation Constitution, Article 3 § 1 (3), §§ 3, 4, Article 22 § 2 (3), Articles 36, 74, 86, 96, 97 and 99 of the Federal Constitutional Law «On the Russian Federation Constitutional Court»,

has examined in open session the case concerning constitutional review of Article 392 § 2 of the Russian Federation Code of Civil Procedure³.

The case originated in applications filed by Mr A.A. Doroshok, Mr A.E. Kot and Ms E.Yu. Fedotova. It has been examined on the ground of apparent uncertainty as to whether the provisions of the Russian Federation CCivP challenged by the applicants are consistent with the Russian Federation Constitution.

Pursuant to Article 48 of the Federal Constitutional Law «On the Russian Federation Constitutional Court», the Russian Federation Constitutional Court has joined the applications because they all have the same subject-matter.

Having heard a report by Ms L.M. Zharkova, *judge rapporteur*, statements made by the parties' representatives and addresses by the following representatives invited to participate in the hearing: Mr E.A. Borisenko, representing the Russian Federation Ministry of Justice; Ms T.A. Vasilyeva, representing the Russian Federation Procurator General, and after having examined the documents and other materials submitted, the Russian Federation Constitutional Court



THE RUSSIAN FEDERATION CONSTITUTIONAL COURT

JUDGMENT

No. 4-P, 26 February 2010,

IN THE CASE CONCERNING CONSTITUTIONAL REVIEW OF ARTICLE 392 § 2 OF THE RUSSIAN FEDERATION CODE OF CIVIL PROCEDURE IN CONNECTION WITH APPLICATIONS FILED BY MR A.A. DOROSHOK, MR A.E. KOT AND MS E.YU. FEDOTOVA

established:

1. According to Article 392 § 1 of the Russian Federation CCivP final judgments and decisions delivered by a court and decisions delivered by the Presidium of a supervisory-review court may be revised due to newly discovered evidence.

Under paragraph 2 of the above Article the list of grounds for revision of the above judgments or decisions due to newly discovered evidence includes: substantial facts of the case which were not and could not have been known to the party who applies for revision (subparagraph 1); knowingly false statements of a witness, knowingly false expert reports, deliberately incorrect translation, falsification of evidence that resulted in an unlawful or ill-grounded judgment or decision delivered by a court or in an unlawful or ill-grounded decision delivered by the Presidium of a supervisory-review court provided that this falsification has been established by a final judgment in a criminal case (subparagraph 2); crimes committed by the parties to the proceedings, by other persons participating in the proceedings, by their representatives, crimes committed by judges in the course of proceedings provided that these crimes

have been established by a final judgment in a criminal case (subparagraph 3); quashing of a judgment or a decision delivered by a court, or a decision delivered by the Presidium of a supervisory-review court, or quashing of a decision delivered by a State body or by a local authority which was the ground of the judgment or the decision delivered by the court or the decision delivered by the Presidium of the supervisory-review court (subparagraph 4); declaring the law that had been applied in a particular case inconsistent with the Russian Federation Constitution by the Russian Federation Constitutional Court if the judgment delivered in this case was the reason for applying to the Russian Federation Constitutional Court (subparagraph 5).

The applicants in the present case — Mr A.A. Doroshok, Mr A.E. Kot and Ms E.Yu. Fedotova — request to declare Article 392 § 2 of the Russian Federation CCivP inconsistent with Articles 1 and 2, Article 15 §§ 1, 2, 4, Article 17 § 1,

¹ The State Duma is the lower chamber of the Russian Parliament (*Editor's note*).

² The Federation Council is the upper chamber of the Russian Parliament (*Editor's note*).

³ Hereinafter referred to as CCivP (*Editor's note*).

Article 18, Article 19 § 1, Article 42, Article 46 §§ 1, 2, Article 55 § 2 and Articles 79 and 120 of the Russian Federation Constitution because it does not provide for revision of final court judgments in case the European Court of Human Rights finds that there has been a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms in the civil proceedings before courts of general jurisdiction that resulted in this judgment when the latter was the reason for applying to the European Court of Human Rights.

1.1. Mr A.E. Kot — a person with the 2nd degree of disability who had taken part in the emergency operations at the site of the Chernobyl nuclear plant accident — applied to the Oktyabrskiy District Court of Tambov for an increase of a compensation awarded to him for deterioration of his health to take account of the inflation. On 27 November 2002 the Oktyabrskiy District Court of Tambov granted his claims and ordered the defendant, the Military Service Commission of the Tambov Region, to increase the future monthly payments and to pay Mr A.E. Kot an additional amount of money in respect of the previous period. On 26 June 2003 the Presidium of the Tambov Regional Court quashed the above judgment by way of supervisory review procedure and remitted the case for a *de novo* examination. On 7 August 2003 the Oktyabrskiy District Court of Tambov re-examined the case and granted Mr A.E. Kot's claims in part; however, it substantially reduced the amount of compensation awarded to Mr A.E. Kot.

Mr A.A. Doroshok — a person with the 3rd degree of disability due to war injuries who had been discharged from the military service in May 2001 — sued the Russian Federation Ministry of the Interior claiming compensation for deterioration of his health. On 21 May 2004 the Rostov-on-Don Garrison Military Court granted his claim and ordered the defendant to pay Mr A.A. Doroshok a lump sum and to make monthly payments to him including upgrades for inflation losses. On 22 March 2005 the Presidium of the Northern Caucasus Circuit Military Court quashed the above judgment by way of supervisory review procedure and issued a new judgment dismissing Mr A.A. Doroshok's claims.

In the cases of Mr A.E. Kot and Mr A.A. Doroshok the European Court of Human Rights found that there had been violations of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of its Protocol No. 1 on account of the quashing of final judgments by way of supervisory review procedure and ordered the Russian Federation to pay them appropriate amounts of money in respect of pecuniary and non-pecuniary damage (*Kot v. Russia*, judgment of 18 January 2007; *Kulkov and Others v. Russia*, judgment of 8 January 2009).

Mr A.E. Kot's and Mr A.A. Doroshok's applications for revision of the supervisory-review courts' decisions due to newly discovered evidence were dismissed because there is an exhaustive list of grounds for such a revision in Article 392 of the Russian Federation CCivP, and this list does not include delivery of a judgment in the applicant's favour by the European Court of Human Rights (the decision by the Presidium of the Tambov Regional Court of 3 April 2008, the decision by the Presidium of the Northern Caucasus Circuit Military Court of 28 April 2009). Moreover, the Tambov Regional Court held that pursuant to Article 393 of the Russian Federation CCivP a decision delivered by the Presidium of a supervisory-review court may be revised due to newly discovered evidence if it alters the trial court's judgment or decides the dispute in another way while in the case of Mr A.E. Kot the trial court's decision was quashed and the case was remitted for a *de novo*

examination; then the trial court re-considered the matter and granted the plaintiff's claims in part.

On 16 October 2000 the Taganrog Town Court of the Rostov Region dismissed Ms E.Yu. Fedotova's claims to recover her property from unlawful possession by other persons and to compensate the damage caused to her. In the case of *Fedotova v. Russia* (judgment of 13 April 2006) the European Court of Human Rights found that there had been a violation of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms in respect of the applicant. It held that the court that issued the judgment in her case could not be regarded as a «tribunal established by law» and awarded Ms E.Yu. Fedotova a compensation in respect of non-pecuniary damage.

On 5 December 2006 the Taganrog Town Court of the Rostov Region dismissed Ms E.Yu. Fedotova's application for revision of the judgment by this court of 16 October 2000 due to newly discovered evidence. The court held that a violation of procedural provisions found by the European Court of Human Rights constitutes a ground for applying to a supervisory-review court. The Judicial Chamber in Civil Cases of the Rostov Regional Court upheld the above decision. On 31 January 2007 it held that there is no room for analogy by statute (as envisaged in Article 1 § 4 of the Russian Federation CCivP and in Article 311 § 7 of the Russian Federation Code of Arbitrage Procedure¹) because Article 392 of the Russian Federation CCivP contains an exhaustive list of grounds for revision of court decisions due to newly discovered evidence.

1.2. As it follows from Articles 74, 96 and 97 of the Federal Constitutional Law «On the Russian Federation Constitutional Court» the scope of a judgment to be delivered by the Russian Federation Constitutional Court should be limited to the subject-matter of the application submitted. It should address only those challenged provisions that affect the applicant's rights and freedoms and have been applied or are to be applied in his or her case; when the Russian Federation Constitutional Court adopts its judgments, it should not confine itself to assessment of the provisions in issue *stricto sensu* and should also take into account how they have been interpreted and applied by official and other bodies; furthermore, it should take note of their place within the system of legal acts.

Mr A.E. Kot challenges constitutionality of Article 392 § 2 of the Russian Federation CCivP taken in conjunction with Article 393 of the Code. The above Article determines the courts that shall revise final court judgments due to newly discovered evidence, i.e. it is intended to implement Article 46 § 1 and Article 47 § 1 of the Russian Federation Constitution. Therefore, it cannot be regarded as a violation of the applicant's right of access to courts and his right to a fair trial guaranteed by these Articles and his allegation to this effect is not correct.

Accordingly, Mr A.E. Kot's application meets the admissibility criterion as defined by the Federal Constitutional Law «On the Russian Federation Constitutional Court» only insofar as it challenges constitutionality of Article 392 § 2 of the Russian Federation CCivP. The same is true for Ms E.Yu. Fedotova's application which challenges constitutionality of Chapter 42 of the Russian Federation CCivP «Revision of final judgments and decisions delivered by a court and decisions delivered by the Presidium of a supervisory-review court due to newly discovered evidence» as a whole because, as it follows from the materials submitted, it was only Article 392 § 2 of the Code that was applied in her case.

¹ Hereinafter referred to as CARbP (Editor's note).

Thus, in the present case the Russian Federation Constitutional Court has to examine Article 392 § 2 of the Russian Federation CCivP insofar as it permits courts to dismiss an application for revision of a final judgment due to newly discovered evidence if the European Court of Human Rights found a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms in the civil proceedings before courts of general jurisdiction that resulted in this judgment when the latter was the reason for applying to the European Court of Human Rights.

2. Pursuant to Article 46 § 3 of the Russian Federation Constitution, every person shall have the right, in accordance with international treaties of the Russian Federation, to apply to international bodies for the protection of human rights and freedoms provided that all available domestic remedies have been exhausted. This right is acknowledged and guaranteed in the Russian Federation pursuant to the Russian Federation Constitution and in accordance with universally recognised principles and rules of international law that along with international treaties of the Russian Federation form a constituent part of its legal system (Article 15 § 4; Article 17 § 1 of the Russian Federation Constitution).

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

Therefore, as the Russian Federation Constitutional Court held in its Judgment of 5 February 2007 No. 2-P, it is not only the Convention for the Protection of Human Rights and Fundamental Freedoms that form a constituent part of the Russian legal system but also judgments by the European Court of Human Rights, insofar as they interpret rights and freedoms set forth in the Convention including the right of access to courts and the right to a fair trial on the basis of universally recognised principles and rules of international law, they form a constituent part of the Russian legal system. Thus, they shall be taken into consideration by the federal legislature when regulating social relations and by law-application authorities when applying relevant laws.

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

In *Burdov v. Russia* (no. 2) (judgment of 15 January 2009) the European Court of Human Rights recalled its settled case-law and held that Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms imposes on the respondent State a legal obligation not only to pay those concerned the sums awarded by way of just satisfaction on account of a violation found by the European Court of Human Rights, but also to choose the general and, if appropriate, individual measures to put an end to this violation in its domestic practice and to redress so far as possible its effects. Such measures should also be taken in respect of other persons in the position of the applicant whose right the European Court of Human Rights found violated.

In the opinion of the European Court of Human Rights, it is for the respondent State to choose the means by which it will discharge its legal obligation under Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms, provided that such means are compatible with the findings of the appropriate judgment by the European Court of Human Rights; unless errors of fact and law allegedly committed by national courts may have infringed rights and freedoms protected by the Convention, it is for the national authorities, notably the courts, to interpret and apply domestic law (*Scozzari and Giunta v. Italy* [GC], judgment of 13 July 2000; *Jahn and Others v. Germany* [GC], judgment of 30 June 2005; *Scordino v. Italy* (no. 1) [GC], judgment of 29 March 2006; *Musayeva v. Russia*, judgment of 3 July 2008; *Ruslan Umarov v. Russia*, judgment of 3 July 2008 *et al.*)

In its Recommendation no. R(2000)2 of 19 January 2000 on the re-examination or reopening of certain cases at domestic level following judgments by the European Court of Human Rights the Council of Europe Committee of Ministers which supervises the execution of judgments by the European Court of Human Rights noted that the respondent State is obliged to take measures which ensure that the injured party is put, as far as possible, in the same situation as he or she enjoyed prior to the violation of the Convention for the Protection of Human Rights and Fundamental Freedoms by this State (*restitutio in integrum*); the respondent State is also obliged to examine its own legal system with a view to ensure that there exist adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where there has been a violation.

Such a discretion as to the means of implementing judgments by the European Court of Human Rights reflects, in its opinion, freedom of choice inherent in the fundamental undertaking of the member States under Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms to secure the rights and freedoms enshrined in the Convention.

2.2. It follows from Article 1 § 1, Article 2, Article 15 § 2, Article 17 § 2, Article 18, Article 45 § 1, Article 46 §§ 1, 2, Articles 52, 53, 55 and 118 of the Russian Federation Constitution that the State shall protect human and constitutional rights and freedoms guaranteed by the Russian Federation Constitution. However, the right to judicial protection which is one of fundamental and inalienable human rights and freedoms cannot be considered effective unless a judgment delivered by a court or an act by another competent authority with a view to restore rights that have been violated is enforced in good time.

Such a conclusion corresponds with Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms and with the practice of the application of this provision by the European Court of Human Rights. The European Court of Human Rights has repeatedly stated that execution of any judicial decision should be considered as an essential element of a fair trial, — otherwise, if the domestic legal system allows a final, binding judicial decision to remain inoperative, the «right to a court» would be illusory (*Hornsby v. Greece*, judgment of 19 March 1997, and *Ryabykh v. Russia*, judgment of 24 July 2003).

Taking into account distinctive features of powers of the European Court of Human Rights which functions on the basis of the subsidiarity principle and special feature of cases before it its judgment in which it obliges the respondent State to pay an appropriate sum of money would not necessarily ensure full restoration of the right that has been violated. The European Court of Human Rights can only find that there

has been a violation of the Convention provisions in respect of the applicant, but it is not in a position to adopt further measures to remedy the violation in issue namely in those cases where it has continuous character or has emerged from substantial breaches of procedural provisions by a domestic court. In such situations a final, binding and enforceable decision by a domestic court which was the reason for applying to the European Court of Human Rights may hinder effective restoration of the right that has been violated.

It is not for international judicial bodies to revise decisions issued by the domestic courts. However, the State is obliged to comply with final judgments by the European Court of Human Rights including judgments concerning violations of the Convention for the Protection of Human Rights and Fundamental Freedoms that may be redressed only by quashing of domestic judicial decisions. This obligation necessitates introducing into domestic legal order a mechanism for recovering rights of those concerned if these rights cannot be restored exclusively by awarding a pecuniary compensation and paying it.

In any event, the person whose application resulted in a judgment by the European Court of Human Rights should have an opportunity to apply to a competent court for revision of judgments delivered in his or her case and be sure that this application will be examined. Otherwise it would infringe and restrict the right of every person to judicial protection which implies certain safeguards ensuring its full implementation and effective restoration of rights by means of administering justice which meets the requirements of fairness (judgments of the Russian Federation Constitutional Court of 2 February 1996 no. 4-P; of 3 February 1998 no. 5-P; of 16 March 1998 no. 9-P; of 25 December 2001 no. 17-P; of 26 December 2005 no. 14-P *et al.*)

3. The Russian Federation Constitution guarantees to everyone the right to judicial protection including the right to appeal against judicial decisions to higher courts. However, it does not expressly provide for a procedure for re-examination and revision of judicial decisions upon applications of those concerned.

The laws to this effect are adopted on the basis of the Russian Federation Constitution by the federal legislature that has quite a wide margin of appreciation as regards introducing the system of judicial instances and envisaging their powers, procedure for appealing against judicial decisions and grounds for quashing them upon the results of their re-examination by competent courts. However, it should be determined on the basis of constitutional objectives and values as well as universally recognised principles and rules of international law and international obligations of the Russian Federation.

3.1. In order to restore rights that have been violated and correct errors made by courts of general jurisdiction in civil proceedings the Russian Federation CCivP envisages proceedings in the second instance for re-examination of judgments and decisions of justices of the peace which have not yet become final (appellate proceedings) and other trial courts' decisions (cassational proceedings) as well as proceedings for re-examination of judgments that have become final, i.e. supervisory review and revision due to newly discovered evidence.

Pursuant to Chapter 41 of the Russian Federation CCivP which provides for the procedure for examination of cases in supervisory-review courts a final judgment may be appealed against to a supervisory-review court by persons participating in the proceedings, by other persons if the judgment in issue infringes their rights and legitimate interests and by a procurator within six months from its becoming final provided

that regular (ordinary) means of appealing against the judgment have been exhausted. As to revision of judgments due to newly discovered evidence, it is carried out in accordance with Chapter 42 of the Russian Federation Civil Code by the court that adopted the challenged judgment acting upon applications from persons participating in the proceedings that have to be submitted to this court within three months from emergence of grounds for revision listed in Article 392 § 2.

The scope of appellate and cassational civil proceedings is limited to re-examination of judgments that have not yet become final. It is virtually impossible to challenge a final court judgment before the European Court of Human Rights within the time-limit for filing an application for supervisory review. Thus, persons whose rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms the European Court of Human Rights found violated, may apply for revision of these judgments due to newly discovered evidence. However, there is no such ground for revision in Article 392 of the Russian Federation CCivP. Therefore, courts tend to leave these applications without examination (as it happened in the applicants' cases). This violates Article 15 § 4 of the Russian Federation Constitution according to which if an international treaty of the Russian Federation establishes rules, other than those provided for by the law, the rules of the international treaty shall take precedence; this also blocks the operation of the Convention for the Protection of Human Rights and Fundamental Freedoms in the territory of the Russian Federation

3.2. It follows from the principle of legal equality in exercising the right to judicial protection (Article 19 §§ 1, 2; Article 46 § 1; Article 123 § 3 of the Russian Federation Constitution) that relations which are similar in their legal nature should be dealt with in a similar manner (Judgment of the Russian Federation Constitutional Court of 25 March 2008 no. 6-P). Compliance with the constitutional principle of equality which protects against all forms of discrimination in enjoyment of rights and freedoms means *inter alia* that it is prohibited to impose such restrictions on rights of persons belonging to the same category without an objective and reasonable justification (prohibition of different treatment of persons in identical or similar situations); any differentiation that leads to discrepancy in constitutional rights in a particular sphere should meet the requirements of the Russian Federation Constitution which provides that such discrepancy is acceptable if it is objectively justified, reasonable and pursues constitutionally important aims to be achieved by proportionate legal means (judgments of the Russian Federation Constitutional Court of 24 May 2001 no. 8-P; of 3 June 2004 no. 11-P; of 15 June 2006 no. 6-P and of 5 April 2007 no. 5-P).

Within the meaning of Article 118 § 2 of the Russian Federation Constitution which provides that justice shall be administered by means of constitutional, civil, administrative and criminal court proceedings taken in conjunction with its Articles 126 and 127 there should be no discrepancy between civil proceedings in courts of general jurisdiction and civil proceedings in arbitration courts as to their principles and main features.

In respect of arbitration proceedings administered by arbitration courts in accordance with international legal obligations of the Russian Federation the law provides that a judgment may be revised due to newly discovered evidence if the European Court of Human Rights has found a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms in the proceedings that resulted in this judgment when the latter was the reason for applying to the European Court of Human Rights (Article 311 § 7 of the Russian Federation CArbP).

As to the Russian Federation CCivP, its Article 392 § 2 (both the original version of the Article and its current version as amended by the Federal Law of 4 December 2007 no. 330-FZ) does not expressly provide that a final judgment may be revised due to newly discovered evidence if the European Court of Human Rights has found a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms in civil proceedings before courts of general jurisdiction. The other grounds for revision of judgments mentioned in this Article are in essence identical to those set forth in the Russian Federation CARBP.

3.3. Listing grounds for revision of judicial decisions due to newly discovered evidence as a result of a judgment finding a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms delivered by the European Court of Human Rights is accompanied by various levels of safeguards designed to protect constitutional rights. However, they cannot be justified by special nature of cases decided by courts of general jurisdiction. In this situation the persons concerned should not be precluded from applying to courts of general jurisdiction for revision of judgments. When examining these applications courts of general jurisdiction should take into consideration Article 1 § 4 of the Russian Federation CCivP according to which if there is no procedural provision concerning relations that originated from civil proceedings they should apply a provision concerning similar relations (analogy by statute); in the absence of such a provision they should refer to principles governing administration of justice in the Russian Federation (analogy by law). Thus, in order to make sure that rights that have been violated will be restored as fully as possible given the circumstances of a particular case and the nature of the dispute, courts should rely on Article 392 § 2 (5) of the Russian Federation CCivP as well as on Article 311 § 7 of the Russian Federation CARBP.

Human rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms are, in essence, the same rights and freedoms as those guaranteed by the Russian Federation Constitution. Therefore, the European Court of Human Rights or the Russian Federation Constitutional Court, respectively, find them violated, it implies, due to common nature of legal status and purpose of these two bodies, existence of a common institutional mechanism for implementation of their judgments that could be used to ensure full restoration of rights that have been violated. Accordingly, both the Russian Federation Constitution and the Convention for the Protection of Human Rights require to consider the provisions of Article 392 of the Russian Federation CCivP within the context of the laws in force in their consistent regulatory uniformity and to take into account Article 392 § 2 (5) which provides that a judgment may be revised due to newly discovered evidence if the Russian Federation Constitutional Court declares inconsistent with the Russian Federation Constitution a law that has been applied in the proceedings that resulted in this judgment when the latter was the reason for applying to the Russian Federation Constitutional Court. This provision should be interpreted on the basis of legal positions of the Russian Federation Constitutional Court on legal effects of its judgments expressed in a number of its decisions (decision of 5 February 2004 no. 78-O, of 12 May 2006 no. 135-O, of 1 November 2007 no. 827-O-P, of 11 November 2008 no. 556-O-P etc.) and confirmed by its Judgment of 21 January 2010 no. 1-P.

3.4. Turning to the matter of the grounds and procedure for revision of judgments delivered by courts of general jurisdiction and arbitrage courts in the applicants' cases where the challenged provision has been applied in an

interpretation inconsistent with the Russian Federation Constitution and this infringed the applicants' constitutional rights and freedoms the Russian Federation Constitutional Court reached the following conclusions.

Legal effects of judgments delivered by the Russian Federation Constitutional Court in those cases where it discloses the constitutional legal meaning of a legislative provision make it impossible to apply this provision in any interpretation inconsistent with the Russian Federation Constitution. It means that the provision at issue becomes inoperative and may not be applied in the future in any previously accepted interpretation inconsistent with its constitutional legal meaning as disclosed by the Russian Federation Constitutional Court. Therefore, as a general rule, once the judgment of the Russian Federation Constitutional Court has come into legal force this provision should not be interpreted and applied in any other way. Thus, a judgment which discloses the constitutional legal meaning of a provision entails legal effects provided for by Article 100 § 2 of the Federal Constitutional Law «On the Russian Federation Constitutional Court» by virtue of which the applicant's case should be re-examined by a competent authority in accordance with ordinary procedure.

A judgment in a case where the Russian Federation Constitutional Court discloses the constitutional legal meaning of a legislative provision thereby preventing it from being applied in any interpretation inconsistent with the Russian Federation Constitution should have retroactive effect in respect of persons who have applied to the Russian Federation Constitutional Court. In other words, these judgments as well as judgments declaring legislative provisions inconsistent with the Russian Federation Constitution entail the same consequences for them. In any event, these applicants' cases should be re-examined by competent bodies regardless of whether the preclusive time-limits for applying to these bodies have expired or whether the appropriate grounds for re-examination of the case are provided for in other laws in addition to the Federal Constitutional Law «On the Russian Federation Constitutional Court».

The Russian Federation CCivP does not expressly provide for revision of judgments if the Russian Federation Constitutional Court discloses a constitutional legal meaning of a provision which does not emerge from law enforcement practice. However, it may not be the reason for a refusal to revise judgments in those cases where violations of constitutional rights and freedoms were established by the highest judicial body which does not belong either to courts of general jurisdiction or to arbitrage courts, i.e. by the Russian Federation Constitutional Court, exercising its jurisdiction in accordance with Articles 46 and 125 of the Russian Federation Constitution and with the Federal Constitutional Law «On the Russian Federation Constitutional Court». Otherwise it would be impossible to implement judgments by the Russian Federation Constitutional Court; thus, applying to the Russian Federation Constitutional Court would be deprived of its purpose. It would make illusory the opportunity of individual persons and groups of persons to protect their rights by means of constitutional justice.

It follows from the safeguards of judicial protection of rights and freedoms provided for by Article 2, Article 15 § 4, Articles 17, 18, 45 and 46 of the Russian Federation Constitution that the above legal positions of the Russian Federation Constitutional Court have general meaning and are applicable to implementation of judgments delivered by the European Court of Human Rights. A failure to provide the same procedural opportunities to persons in whose cases the European Court of Human Rights found violations of the Convention for the Protection of Human Rights and Fundamental Freedoms in proceedings before courts of

general jurisdiction identical to violations of respective constitutional rights would significantly restrict the right to judicial protection. Moreover, it would be inconsistent with constitutional principles of equality, priority of international treaties of the Russian Federation in its legal system and constitutional objectives of civil procedure. In this situation it would be impossible to consider recourse to procedures before the European Court of Human Rights as an effective remedy to protect rights that have been violated.

3.5. Thus, Article 392 § 2 of the Russian Federation CCivP — given its constitutional legal meaning in the current legislative context and priority of international treaties of the Russian Federation proclaimed in Article 15 § 4 of the Russian Federation Constitution — should not be regarded as permitting a court of general jurisdiction to dismiss a citizen's application for revision of a judgment delivered by this court due to newly discovered evidence if the European Court of Human Rights found a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms that resulted in this judgment when the latter was the reason for applying to the European Court of Human Rights. Accordingly, the question of whether it is possible to revise the challenged court judgment should be decided by a competent court on the basis of a comprehensive examination of the applicant's arguments and facts of a particular case.

Any other interpretation of Article 392 § 2 of the Russian Federation CCivP in law-application practice would be inconsistent with general legal principles of justice and equality, Article 15 §§ 1, 2, 4, Article 17 § 1, 2, Article 18, Article 19 §§ 1, 2, Article 46, Article 118 § 2 and Article 120 of the Russian Federation Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms.

At the same time, it should be taken into account that there are procedures in the State's legal system for revision of final judgments in cases where violations of the Convention for the Protection of Human Rights and Fundamental Freedoms were found in the proceedings that resulted in these judgments. These procedures are tantamount to a general measure which is necessary for implementation of the above Convention commands according to Article 46 of the Convention in conjunction with Articles 19, 46 and 118 of the Russian Federation Constitution. Therefore, it also requires to introduce a legislative mechanism for implementation of final judgments by the European Court of Human Rights which would ensure adequate restoration of rights found violated by the European Court of Human Rights.

Accordingly, the federal legislature should amend the Russian Federation CCivP in order to ensure that final judgments may be revised if the European Court of Human Rights has found a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms in the civil proceedings before courts of general jurisdiction that resulted in a judgment which was the reason for applying to the European Court of Human Rights. When doing so, the federal legislature should warrant uniform and proper legal regulation based on the Russian Federation Constitution and legal positions expressed by the Russian Federation Constitutional Court including those contained in the present Judgment.

On the basis of the above stated and pursuant to Article 6, Article 71 §§ 1, 2, Articles 72, 74, 75, 79 and 100 of the Federal Constitutional Law «On the Russian Federation Constitutional Court», the Russian Federation Constitutional Court

held:

1. To declare consistent with the Russian Federation Constitution Article 392 § 2 of the Russian Federation CCivP insofar as — given its constitutional legal meaning in the current legislative context and the priority of international treaties of the Russian Federation in Article 15 § 4 of the Russian Federation Constitution — it may not be considered as permitting a court of general jurisdiction to deny examination of a citizen's application for revision of a judgment delivered by this court due to newly discovered evidence if the European Court of Human Rights has found a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms in the proceedings that resulted in this judgment when the latter was the reason for applying to the European Court of Human Rights.

2. The constitutional legal meaning of Article 392 § 2 of the Russian Federation CCivP disclosed in the present Judgment shall have generally binding effect. This precludes any other interpretation of this provision in law-application practice.

3. Court judgments in the cases of Mr A.A. Doroshok, Mr A.E. Kot and Ms E.Yu. Fedotova delivered on the basis of Article 392 § 2 of the Russian Federation CCivP and interpreted in a manner inconsistent with its constitutional legal meaning as disclosed in the present Judgment shall be revised in accordance with the established procedure.

4. The present Judgment is final, not amenable to appeal and takes legal effect immediately after its proclamation. It shall be directly applicable and does not need to be confirmed by other bodies or officials.

5. Pursuant to Article 78 of the Federal Constitutional Law «On the Russian Federation Constitutional Court» the present Judgment shall immediately be published in the *Rossiyskaya Gazeta* [Russian Gazette] and in the *Sobraniye Zakonodatelstva Rossiyskoy Federatsii* [Compendium of the Laws of the Russian Federation]. It shall also be published in the *Vestnik Konstitutsionnogo Suda Rossiyskoy Federatsii* [Bulletin of the Russian Federation Constitutional Court].

The Russian Federation Constitutional Court

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