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## Russian Constitutional Court: European Court judgments are 'newly discovered circumstances' in civil cases

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On 26 February 2010, the Constitutional Court of the Russian Federation (CC) ruled that Russian courts of general jurisdiction are obliged to reconsider a civil case where the ECtHR has found a violation of an applicant's rights in that case. It also ordered the Russian Parliament to amend the Code of Civil Procedure (CCP) to provide the legal grounds for lodging an application for a final court judgment to be reviewed in cases where the ECtHR has found violations of applicants' rights.

### Background

Constitutional complaints were lodged by three Russian nationals: Aleksey Doroshok, Anatoliy Kot and Yelena Fedotova. The ECtHR had previously ruled that the Russian courts had violated their rights under the ECHR.<sup>1</sup> The applicants had requested Russian courts of general jurisdiction to review their cases substantiating their claims using the ECtHR judgments in their cases. The national courts refused to reconsider the applicants' cases as the

CCP did not contain a provision allowing the review of a final court judgment on the grounds invoked by the applicants. In contrast, both the Code of Criminal Procedure and the Code of Arbitration Procedure have provisions allowing the courts to reconsider a case on the grounds of an ECtHR judgment under the heading of 'new circumstances' (criminal cases) or 'newly discovered circumstances' (commercial cases).

### Ruling

The CC held that the provisions of Art. 392(2) CCP complied with the Russian Constitution *per se*. It also gave a 'pro-constitutional' interpretation of the impugned provision, stating that, for the purposes of Art. 392(2) CCP, a ECtHR judgment should be treated as a 'newly discovered circumstance' thus granting a person the right to request the reconsideration of the civil case and preventing national courts from rejecting such applications as unsubstantiated.

The CC noted that ECtHR judgments and the ECHR form an integral part of the Russian legal system and should be taken into consideration by the legislature and other authorities. The Court cited

*Burdov v Russia (No.2)*<sup>2</sup> stating that the Russian authorities' undertaking to abide by final ECtHR judgments includes not only the payment of monetary compensation, but also the adoption of general and individual measures.

The CC further noted that the ECtHR does not have the power to review the judgments of national courts and it is incumbent on national judicial authorities to reconsider a case where it is necessary to rehabilitate the applicant. The CC stated that the discrepancy between a ECtHR judgment falling within the category of 'newly discovered circumstances' in the Code of Arbitration Procedure but not in the CCP had led to a lower level of human rights guarantees in civil judicial process, which could not be justified by the nature of the cases to be decided by the courts of general jurisdiction.

1 *Kulkov & Others v Russia* (Nos. 25114/03, 11512/03, 9794/05, 37403/05, 13110/06, 19469/06, 42608/06, 44928/06, 44972/06 & 45022/06) 8/11/09; *Kot v Russia* (No. 20887/03) 18/11/07; *Fedotova v Russia* (No. 73225/01) 13/4/06.

2 *Burdov v Russia (No. 2)* (No. 33509/04) 15/11/09.

