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Supervisory review procedure in civil proceedings: new reforms needed

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On 8 February 2006, the Committee of Ministers of the Council of Europe adopted **Interim Resolution ResDH(2006)1**, concerning the cases of *Ryabykh v. Russia* (No. 52854/99) 24/07/03 and *Volkova v. Russia* (No. 48758/99) 05/04/05, in which the European Court of Human Rights found that there had been a violation of Article 6(1) of the European Convention for Human Rights (ECHR) due to the quashing of judicial decisions taken in the applicants' favour, by way of the supervisory review procedure.

The violation of the Convention consisted of the fact that the Presidia of the regional courts, following protests by the Presidents of these courts, quashed judicial decisions that had come into legal force, which in the unanimous opinion of the Strasbourg Court violated the principle of legal certainty. Furthermore, during examination of these cases by the Court in 2001-2002, in Russia a reform of procedural legislation was carried out, which, however, was aimed at making the supervisory review procedure an effective means of legal protection. As we know from the decisions in *Berdzenishvili v. Russia* (No. 31697/03) 29/01/04 and *Denisov v. Russia* (No. 33408/03) 6/5/04, this aim was not achieved. In other words, the reforms sought merely to curtail the discretionary powers of officials in the judiciary system, rather than strengthen the principle of legal certainty.

Thus, the Committee of Ministers examined the reformed supervisory review procedure in order to ensure that Russia complies with its Convention obligations. The Resolution highlights two fundamental problems relating to supervisory review: compliance with the principle of legal certainty and the quality of judicial decisions in first and second instances.

In relation to the principle of legal certainty, the Committee of Ministers noted two changes in the Code of Civil Procedure of the Russian Federation (GPK RF) aimed at strengthening this principle: a limit on those who have the right to lodge a supervisory

appeal to parties to the case (Art. 376(1)), and a limit on the time for lodging a supervisory appeal, within a period of one year (Art. 376(2)). However, these measures do not remove the doubt concerning compliance of the supervisory review procedure with the aforementioned principle. So, a series of provisions of the GPK RF (like the former GPK RSFSR [Code of Civil Procedure of the Russian Soviet Federal Socialist Republic]) allow indefinite challenge by way of supervisory review to judicial decisions that have come into force (see Art. 389 of the GPK RF and the challenge to individual decisions of courts with supervisory powers, with which the presidents of the corresponding courts are entitled “not to agree”). Moreover, any violation of material and procedural law can be a basis for quashing a judicial decision that has come into force and is binding for the parties, while deviation from the principle of legal certainty by quashing final judicial decisions is admissible only in exceptional circumstances.

The problem of the supervisory review procedure is indivisible from the problem of the poor quality of judicial decisions of the first and second instances. The Committee of Ministers pointed out that the supervisory review procedure was seen by a significant part of the Russian judicial community as the only real instrument for remedying the numerous judicial errors allowed by courts of first and second instance. At the same time the Committee expressed particular concern that in many cases the court with supervisory authority is the court that previously examined the case at the cassational level: it is unclear why it is impossible to remedy all errors in a single procedure. The Committee emphasized separately that in an effective judicial system judicial errors must be remedied in an ordinary appeal and/or cassational procedure. Therefore, further limiting the supervisory review procedure must be carried out in parallel with improvements in the quality of judicial decisions.

Taking these factors into consideration, the Committee of Ministers called upon the Russian authorities to make it their priority to reform civil proceedings, remedying judicial errors through appeal and/or cassational procedures. During implementation of this reform the Committee suggested to the RF authorities that they curtail use of the supervisory review procedure limiting the grounds for quashing decisions by way of supervisory review only to the most serious violations, taking measures to encourage parties to apply above all to appeal and/or cassational, and not supervisory appeal, procedures, limiting the number of successive supervisory appeals in the same case, etc. The Committee of Ministers suggested that the Russian authorities disseminate the Resolution widely and provide within one year a plan of action for taking further measures.

Attached to the Interim Resolution was information presented to the Committee of Ministers by the Russian government. Apart from the reform of the GPK RF and the publication of the court’s decision in the *Ryabykh* case, the Government pointed out that this decision had been applied in the judicial practice of the Russian Constitutional Court (decision No. 113-O of 12/04/05 concerning the appeal by A. Maslov). This claim looks more than dubious, insofar as it is in precisely this decision that the Russian Constitutional Court found that the supervisory review procedure (according to the Administrative Violations Code that has not undergone any reforms in the last 20 years) was *not* in conflict with either the Russian Constitution or the legal findings of the European Court.

The information on suggested further reforms presented by

the Russian Government is unconvincing. The authorities acknowledge, only with reservations, that the reform of the GPK RF did not solve all problems, but in no way indicate their preparedness to continue the reforms. At the same time, new reforms, as follows from the Interim Resolution, are absolutely necessary, not only in civil proceedings, but also in criminal and arbitrational proceedings, and those involving administrative infractions.