

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment

of 5 February 2007 No. 2-II

in the case concerning the review of the constitutionality of the provisions of Articles 16, 20, 112, 336, 376, 377, 380, 381, 382, 383, 387, 388 and 389 of the Civil Procedure Code of the Russian Federation, in connection with a request of the Cabinet of Ministers of the Tatarstan Republic, complaints of Nizhnekamskneftekhim OJSC, Khakasenergo OJSC, and a number of citizens.

Moscow, 5 February 2007

The Constitutional Court of the Russian Federation composed of President V. D. Zorkin and Judges N. S. Bondar, G. A. Gadzhiev, Yu. M. Danilov, G. A. Zhilin, S. M. Kazantsev, M. I. Kleandrov, L. O. Krasavchikova, S. P. Mavrin, N. V. Melnikov, Yu. D. Rudkin, N. V. Seleznev, A. Ya. Sliva, V. G. Strekozov, O. S. Khokhryakova, B. S. Ebzeev, V. G. Yaroslavtsev,

in the attendance of M.-S. A. Abakarov, A. D. Ishchenko, A. A. Maslov, A. I. Maslov, S. V. Ponomaryova, O. S. Poludo, E. A. Sizikov, attorney E. A. Gataullin as representative of S. P. Savelyev and R. P. Savelyeva, attorney N. V. Zhikharev as representative of Khakasenergo OJSC and N. R. Gilmutdinov, attorneys M. G. Raskin and A. R. Sultanov as representatives of the Cabinet of Ministers of the Tatarstan Republic and Nizhnekamskneftekhim OJSC, Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation Ye. B. Mizulina, Representative of the Council of the Federation Ye. V. Vinogradova, PhD in Law, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. V. Krotov,

pursuant to Subsection "a", Section 2 and Section 4, Article 125 of the Constitution of Russian Federation, Subsection 1 "a", Subsection 3, Section 1, Sections 3 and 4, Article 3, Articles 36, 74, 84, 85, 86, 96, 97 and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation",

in an open hearing, examined the constitutionality of certain provisions of Articles 16, 20, 112, 336, 376, 377, 380, 381, 382, 383, 387, 388 and 389 of the Civil Procedure Code of the Russian Federation.

The reason for the consideration of the case is a request of the Cabinet of Ministers of the Tatarstan Republic and complaints of Nizhnekamskneftekhim OJSC, Khakasenergo OJSC and complaints of M.-S. A. Abakarov, A. V. Andriyanova, I. Z. Gafiyatullin, N. R. Gilmutdinov, D. E. Zaugarov, A. D. Ishchenko, L. S. Kolodko, A. A. Maslov, A. I. Maslov, A. I. Maslova, Y. Y. Oleynikova, T. F. Polyakina, O. S. Poludo, S. V. Ponomaryova, S. P. Savelyev, R. P. Savelyeva, E. A. Sizikov, F. F. Chertovsky, A. F. Shipina and A. V. Shcherbinin. The ground for the consideration of the case is the discovered uncertainty of whether the provisions challenged by the applicants are in conformity with the Constitution of the Russian Federation.

Insofar as the request and complaints concern essentially the same subject matter and pursuant to Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation is permitted to consider these applications together.

Having heard the report of Judge-Rapporteur O. S. Khokhryakova, statements by the parties and their representatives, the expert opinion of Ye. A. Borisova, PhD in Law, V. M. Zhuykov, representative of the Supreme Court of the Russian Federation, Deputy President of the Supreme Court of the Russian Federation invited to participate in the hearing; and 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 :

In their complaints to the Constitutional Court of the Russian Federation, the applicants challenge the constitutionality of a number of provisions of the Civil Procedure Code of the Russian Federation, namely Subsection 3, Section 1, Article 16, Section 2 (1), Article 20, Articles 112 and 336, Section 1, Article 376, Section 2, Article 377, Article 380 (2), (3) and (4), Sections 2, 3, 5 and 6, Article 381, Section 2 and Section 3 (4), Article 382, Articles 383, 387, 388 and 389.

1.1. In its decision of 4 March 2003, the Sosnovy Bor Town Court of the Leningrad Region granted the civil claims of A. D. Ishchenko concerning recovery, from the Department of Social Protection of People of the Municipal Entity “Gorod Sosnovy Bor” of arrears on compensatory payments for damages to health for the period between 7 December 2000 and 28 February 2003, and imposed an obligation on the defendant to pay monthly the indicated monetary compensation to the plaintiff from 1 March 2003 with subsequent indexation according to the procedure and time-limits prescribed by law. Under the decision of the Judicial Section for Civil Cases of the Leningrad Regional Court, of 19 November 2003, the decision of the first instance court was amended in respect of the amounts of the recovered payments.

On 20 May 2005, the Presidium of the Leningrad Regional Court, where pursuant to Article 376 of the Civil Procedure Code, the Department of Social Protection of People of the Municipal Foundation “Gorod Sosnovy Bor” lodged a complaint seeking supervisory review of the rendered judicial decisions, annulled the mentioned decisions and rejected the civil claims of A. D. Ishchenko. On 1 September 2006, the Judicial Section for Civil Cases of the Supreme Court of the Russian Federation annulled the decision of the Leningrad Regional Court and upheld the decision of the first instance court and the decision of the cassation instance court in supervisory review proceedings instituted under the complaint of A. D. Ishchenko.

In his complaint to the Constitutional Court of the Russian Federation, A. D. Ishchenko requests to review the constitutionality of Section 1, Article 376 of the Civil Procedure Code of the Russian Federation, according to which final decisions, excluding decisions of the Presidium of the Supreme Court of the Russian Federation, may be appealed against to the supervisory instance court by the participants in the proceedings and other persons, if their rights and lawful interests are violated by judicial decisions. The applicant believes that the mentioned norm allows the state official of public authorities, who is a party to the proceedings, to obtain supervisory review of the final judicial decisions rendered in favour of a citizen and which should be strictly enforced, with the aim to annul it. That is why the mentioned provision does not conform to Articles 2, 15 (Section 2), 17 (Section 1), 18, 45 (Section 1) and 46 (Section 1) of the Constitution of the Russian Federation and does not conform to Article 2 of the International Covenant on Civil and Political Rights and to Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights.

With reference to Subsection 3, Section 2, Article 377 of the Civil Procedure Code of the Russian Federation, the supervisory review complaints of A. V. Andriyanova, D. E. Zaugarov, L. S. Kolodko, A. A. Maslov, A. I. Maslov, A. I. Maslova, O. S. Poludo, T. F. Polyankina, F. F. Chertovsky, A. F. Shipina and A. V. Shcherbinin, which were lodged with the Supreme Court of the Russian Federation against judgments and decisions of Justices of the Peace and appellate judgments and decisions of the district courts rendered in their civil cases, were dismissed without consideration on the merits due to lack of jurisdiction of the Supreme Court of the Russian Federation over the complaints.

The applicants believe that Subsection 3, Section 2, Article 377 of the Civil Procedure Code of the Russian Federation, providing that a supervisory review complaint (request) shall be filed against decisions rendered by the presidiums of the supreme courts of the republics, territorial courts, regional courts or other courts equal to them, precludes appeals to this supervisory instance against judgments and decisions of Justices of the Peace and appellate judgments and decisions of district courts, when a judge of the supreme court of a republic,

territory, region or other court equal to them denied to grant certiorari (request the inferior court to send the record of a case), or when transfer of the case for consideration on the merits by the supervisory instance court is denied and the president of the court certifies lawfulness of such denials. The applicants believe that this arrangement violates the equality of citizens in the exercise of the right to judicial protection, derogates their right to free access to justice, prevents rectification of judicial mistakes, and for these reasons does not conform to Articles 2, 19 (Sections 1 and 2), 45 (Section 1), 46 (Section 1), 55 (Sections 2 and 3) and 126 of the Constitution of the Russian Federation.

M.-S. A. Abakarov and S. V. Ponomaryova, who repeatedly requested supervisory instance courts to review, in supervisory review proceedings, the decisions in their cases, were denied the transfer of the cases for consideration on the merits by the supervisory instance courts.

As is stated by the applicants, Sections 2, 3 and 6, Article 381, Section 2, Article 382 and Article 383 of the Civil Procedure Code of the Russian Federation, which regulate the procedure of consideration by the supervisory instance court of the supervisory complaints and of the cases where certiorari was granted, prevent exercise of the citizens' right of access to the supervisory instance court and violate guarantees of judicial protection which are provided for by Articles 15, 17, 18, 45, 46 (Section 1), 47 (Section 1), 55 (Section 2 and 3), 118, 120 and 123 of the Constitution of the Russian Federation and § 1, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The challenged provisions permit the judge to render a decision to deny certiorari and in cases where certiorari was granted to deny transfer of the case for consideration on the merits without holding a hearing and fully examining the materials of the case, not on the collegiate basis, but alone, and without the summoning and participation of the parties. As a result, as citizens are deprived of their right to defend their rights and lawful interests personally on the basis of principles of adversarial proceedings and equality of arms, a final decision which certifies the lawfulness of the appealed decisions is rendered.

The applicants claim that Section 6, Article 381, and Section 2, Article 383 of the Civil Procedure Code of the Russian Federation are unconstitutional since the norms of these provisions allow non-procedural activities of the president of the supreme court of republic, territory, region or a court equal to them, the President of the Supreme Court of the Russian Federation, the Deputy President of the Supreme Court of the Russian Federation in exercise of their power to agree or disagree with the decision of a judge rendered upon a supervisory complaint to deny certiorari or to deny transfer of a case for consideration on the merits to the supervisory instance court.

Further, S. V. Ponomaryova, Y. Y. Oleynikova and E. A. Sizikov request to review the constitutionality of Article 387 of the Civil Procedure Code of the Russian Federation, which provides that significant violations of the norms of substantive or procedural law are grounds for annulling or amending the judicial decisions of inferior courts in supervisory review. In the applicants' opinion, due to uncertainty of the term "significant violations" in this Article, different interpretations are possible in the law-enforcement practice. As a consequence, the discretion of a judge (the president of a court) is unlimited in regard of determination of the necessity to grant certiorari and transfer it to the supervisory instance court for consideration on the merits. This leads to violation of the citizens' right to a fair trial and judicial protection of their rights and freedoms and does not conform to Articles 46 (Section 1) and 55 (Sections 2 and 3) of the Constitution of the Russian Federation.

In its request, the Cabinet of Ministers of the Tatarstan Republic, which applied to the Constitutional Court of the Russian Federation under Article 125 (Subsection "a", 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", the Khakasenergo OJSC and Nizhnekamskneftekhim OJSC in their complaints and I. Z. Gafiyatullin, N. R. Gilmutdinov, S. P. Savelyev and R. P. Savelyeva challenge the constitutionality of Article 389 of the Civil Procedure Code of the Russian Federation. Pursuant to this Article, the President or a Deputy President of the Supreme Court may lodge, with the Presidium of the Supreme Court, a reasoned request for supervisory review of judicial acts in order to ensure unity of judicial practice and legality.

As follows from the submitted documents, in November 2005 the Presidium of the Supreme Court of the Russian Federation, under a request of the Deputy President of the Supreme Court of the Russian Federation, annulled the decision of the Sayanogorsk Town Court of 21 August 2002 which established the fact that the Khakasenergo OJSC possessed, as private property, certain facilities of the power industry; the cassation instance court did not examine this case and no supervisory review complaints were submitted to the Supreme Court of the Russian Federation against the decision of the first instance court under which the right to property in respect of the said facilities was registered. In a similar way, a Deputy President of the Supreme Court of the Russian Federation, under Article 389 of the Civil Procedure Code of the Russian Federation, lodged a request with the Presidium of the Supreme Court of the Russian Federation for supervisory review of the final judicial decisions rendered in the civil cases with the participation of the Nizhnekamskneftekhim OJSC and I. Z. Gafiyatullin, N. R. Gilmutdinov, S. P. Savelyev, and R. P. Savelyeva.

The applicants state that Article 389 of the Civil Procedure Code of the Russian Federation does not conform to the generally recognized principles and norm of the international law on fair administration of justice and the international legal obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms and Articles 2, 4 (Section 2), 10, 15 (Section 2), 18, 19 (Section 2), 21, 46 (Section 1), 47 (Section 1), 55 (Section 2 and 3), 94, 118, 120 (Section 1) and 126 of the Constitution of the Russian Federation, to the extent that it vests the mentioned officials with an unlimited, by a procedural time limit, right to lodge requests for supervisory review of final judicial decisions with the Presidium of the Supreme Court of the Russian Federation. They may exercise this right regardless of whether there is a supervisory review complaint (request) of the person interested in such review, through procedures not prescribed by law and without due regard to the general order of instances for lodging supervisory review complaints (requests). Moreover, the ground for lodging a request provided for by this Article does not correspond to the general legal criterion of clarity and lucidity of the legal norm. In the applicants' opinion, vesting the power to lodge requests with the Presidium of the Supreme Court of the Russian Federation in persons holding the highest offices in the system of courts of general jurisdiction the President of the Supreme Court of the Russian Federation and Deputy Presidents of the Supreme Court of the Russian Federation, who are members of the Presidium of the Supreme Court of the Russian Federation, does not conform to the principles of impartiality, independency and fairness of administration of justice.

1.2. The Presidium of the Penza Regional Court, having dismissed the motion for recusal of the whole composition of the court, lodged by E. A. Sizikov, by the decision of 22 April 2005, annulled the appellate decision of the Zheleznodorozhny District Court of Penza by which the civil claims of E. A. Sizikov to recover a monthly interest under a loan contract with M. B. Burmistrova and Y. V. Zhukova were granted, and remitted the case for new examination by the appellate court. The supervisory review complaint lodged by E. A. Sizikov with the Supreme Court of the Russian Federation against the above decisions was returned to him by the judge of the Supreme Court of the Russian Federation without consideration as falling outside of jurisdiction pursuant to Subsections 1 and 3, Section 2, Article 377 of the Civil Procedure Code of the Russian Federation. On 12 August 2005, the Zheleznodorozhny District Court of Penza dismissed E. A. Sizikov's appeal lodged against the decision of the Justice of the Peace for the 2nd Judicial Circuit, by which, pursuant to Section 1, Article 112 of the Civil Procedure Code of the Russian Federation, the missed time limit for lodging the appeal was restored for the defendants in his civil action, M. B. Burmistrova and Y. V. Zhukova.

Challenging, together with other applicants in the present case, the constitutionality of Subsection 3, Section 2, Article 377 of the Civil Procedure Code of the Russian Federation, the

applicant refers to the fact that its norm has deprived him of his right to appeal against the decision of the presidium of the regional court rendered in the case falling under the jurisdiction of the Justice of the Peace to the Judicial Section for Civil Cases of the Supreme Court of the Russian Federation. Meanwhile, the abovementioned norm does not establish any exception in respect of appealing against such decisions. However, reviewing the lawfulness of a decision by a judge of the Supreme Court of the Russian Federation, who returned the supervisory review complaint of E. A. Sizikov against the decision of the Presidium of the Penza Regional Court without consideration on the merits, is outside the competence of the Constitutional Court of the Russian Federation as determined by Article 125 of the Constitution of the Russian Federation and Article 3 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

Further, the applicant believes that his constitutional rights are violated by Subsection 3, Section 1, Article 16, and Section 2 (1), Article 20 of the Civil Procedure Code of the Russian Federation, since the procedure for examination the motions for recusal of judges (in the present case members of the Presidium of the Penza Regional Court) prescribed by these provisions and specifically the decision on whether the circumstances which raise doubts about the objectivity and impartiality of judges exists is made by this very composition of the court which allows to dismiss the motion without reasons. Meanwhile, as has been reiterated by the Constitutional Court of the Russian Federation, the institution of recusal of judges is aimed at implementing the norms of the Constitution of the Russian Federation (Article 46, Section 1; Article 120, Section 1; Article 123, Section 3) and the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6) concerning the right to judicial protection by an independent and impartial court, established under the law, which is also guaranteed by the whole complex of civil procedural means and procedures. In particular, control over the objectivity and impartiality in examination of a case is provided by superior judicial instances, which should grounds for annulling judicial decisions of inferior courts be discovered, shall follow the constitutional and international legal principles of administration of justice and shall apply them directly pursuant to Article 15 (Sections 1 and 4) of the Constitution of the Russian Federation and Article 11 of the Civil Procedure Code of the Russian Federation.

E. A. Sizikov asserts unconstitutionality of Article 112 of the Civil Procedure Code of the Russian Federation on the basis of the fact that it allows arbitrary restoration of the missed time limit for lodging an appeal against a decision of the Justice of the Peace. Meanwhile, this Article is also intended to widen the guarantees of judicial protection of the rights and lawful interests of the civil proceedings’ participants. The fact that the mentioned Article does not contain a list of grounds for restoring the missed time limit for the interested persons to lodge a supervisory

review complaint, contrary to the applicant's allegations, does not mean that the court has unlimited discretionary powers, since, by considering certain justifiable reasons the court resolves the issue taking into account all the circumstances of a certain case and within the discretion provided by law.

Moreover, neither Article 112 of the Civil Procedure Code of the Russian Federation, nor Subsection 3, Section 1, Article 16, nor Section 2 (1), Article 20 of the Code shall be applied without taking into consideration Subsection 5, Section 1, Article 225 of this Code, which among the general requirements to the content of the judicial decision prescribes mandatory statements of the reasons on which the court has reached a conclusion. The mentioned provisions of the law taken in their systemic unity do not allow the court resolving issues of recusal of a judge or restoration of the missed time limit to ignore or to arbitrarily dismiss the arguments of a motion or request without indicating the factual and legal reasons for dismissal. Consequently, the mentioned provisions prohibit rendering respective decisions without full examination or assessment of the stated arguments, without reference to certain grounds according to which one or another claim have been rejected or taken into account, and without references to the relevant norms of the substantive and procedural law.

As regards the applicant's statement concerning violation of the principle of impartiality of the court by unreasoned dismissal of his motion for recusal of the whole composition of the court and unreasonable restoration of the time limit for lodging the appeal against the decision of the Justice of the Peace, missed by the defendant, this issue, as requiring consideration on the basis of determining and examining the factual circumstances of the case, is within the competence of courts of general jurisdiction and may not be examined in constitutional proceedings.

T. F. Polyankina, who also challenges the constitutionality of Subsection 3, Section 2, Article 377 of the Civil Procedure Code of the Russian Federation, states that Article 336 violates her rights to judicial protection as it prevents her from appealing against a decision of the Justice of the Peace to the cassation instance court. Meanwhile, pursuant to the legal opinion of the Constitutional Court of the Russian Federation, the legislative regulation does not violate the citizens' constitutional rights by prescribing review of Justice of the Peace decisions which have not become final, by district courts in appellate proceedings. District courts are considered by the legislator as the second judicial instance equal to courts reviewing the decisions of other first instance courts in cassation proceedings (Decision No. 110-O of 15 May 2002, No. 359-O of 20 October 2005, and others).

Besides Article 398 of the Civil Procedure Code of the Russian Federation, R. P. Savelyeva challenges the provisions of Article 380 (2), (3) and (4) of the Code, which, in

the applicant's opinion, are in a unity with Article 398. These provisions establish grounds for judges to return a supervisory review complaint (request) without consideration on the merits. However, these provisions were not applied in the applicant's case since no supervisory review applications or prosecutor's requests against the decisions rendered in this case were lodged with the Presidium of the Supreme Court of the Russian Federation. As regards the provision of Section 3 (4), Article 382 of the Civil Procedure Code of the Russian Federation, which is also challenged by the applicant and pursuant to which the case transferred to the Presidium of the Supreme Court of the Russian Federation shall be examined by the supervisory instance court within four months, this provision itself may not be considered as violating any constitutional rights and freedoms of citizens.

M.-S. A. Abakarov requests to review the constitutionality of Section 5, Article 381 of the Civil Procedure Code of the Russian Federation, which provides that in case of denial of certiorari, the application complaint and copies of judicial decisions which are appealed against shall remain in the supervisory instance court. The applicant asserts that failure to return copies of judicial decisions significantly hinders or makes it impossible to exercise the right of access to the supervisory instance court. This statement may not be recognized as reasonable since the parties and their representatives in any case have the right to subsequently obtain copies of judicial decisions rendered in the case after payment of the established state fee (Article 333.19 of the Tax Code of the Russian Federation).

In addition to Article 387 of the Civil Procedure Code of the Russian Federation, Y. Y. Oleinikova challenges the constitutionality of Article 388, which specifies requirements concerning the content of supervisory instance court decisions. Meanwhile, the applicant's case was not transferred to the supervisory instance court for consideration on the merits and no documents proving that the mentioned Article was applied or was to be applied in her case were submitted.

1.3. Pursuant to Articles 74, 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation delivers decisions only on the subject matter indicated in the complaint and only in respect of the part of the act, which constitutionality is challenged by the applicant, and reviews the constitutionality of a law or its provision upon a complaint about violation of the applicants' rights only to the extent that it has been applied in the applicant's case and affects his rights and freedoms.

Since in what concerns the review of the constitutionality of the provisions of Subsection 3, Section 1, Article 16, Section 2 (1), Article 20, Article 112 and 336, Article 380 (2), (3) and (4), Section 5, Article 381, Section 3 (4), Article 382 and Article 388 of

the Civil Procedure Code of the Russian Federation the complaints of the applicants challenging the mentioned norms, may not be recognized as admissible the proceedings on these complaints to this extent shall be discontinued pursuant to Subsection 2, Section 1, Article 43 and Article 68 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

Thereby, the subject matter of the review of the Constitutional Court of the Russian Federation in the present case is the following interrelated provisions of the Civil Procedure Code of the Russian Federation which regulate the supervisory review of the final judicial decisions:

Section 1, Article 376, providing a possibility to appeal to the supervisory instance court against final judicial decisions, except judicial decisions of the Presidium of the Supreme Court of the Russian Federation, for persons who participated in the proceedings and other persons if their rights and lawful interests have been violated by the judicial decisions;

Subsection 3, Section 2, Article 377, to the extent that it prevents supervisory review of judicial orders, decisions and judgments of Justices of the Peace and appellate judgments and district courts’ decisions to the Judicial Section for Civil Cases of the Supreme Court of the Russian Federation, when a judge of the supreme court of a republic, a territory court, a region court or a court equal to them delivers a decision to grant certiorari under a supervisory review complaint (request) against the indicated decisions or decision to deny transfer of the case for consideration on the merits by the supervisory instance court and the president of the respective court certifies lawfulness of such denials;

Sections 2 and 3, Article 381, and Section 2, Article 382, which regulate the procedure of a judge considering a supervisory review complaint (request) and cases where certiorari was granted by a supervisory instance court; and provide for the power of a judge, upon consideration of a supervisory review complaint (request), to grant certiorari in the case originating from an inferior court, if there are doubts as to the lawfulness of the judicial decision, or to deny certiorari, if the arguments stated in the complaint or request may not entail a possibility of annulment of a judicial decision under the federal law; equally these provisions provide for the power of a judge to render a decision to transfer the case where certiorari was granted for consideration on the merits by the supervisory instance court, or deny such transfer;

Section 6, Article 381, and Section 2, Article 383, which provide for the power of the president of the supreme court of a republic, territory, region of other court equal to them, the President of the Supreme Court of the Russian Federation, the Deputy President of the Supreme Court of the Russian Federation to disagree with the judge’s decision to deny certiorari or to deny transfer of the case to the supervisory instance court for consideration on the merits, and to

issue their own decision to grant certiorari, transfer the case to the supervisory instance court for consideration on the merits;

Article 387, which establishes grounds for annulling or amending judicial decisions of inferior courts in supervisory review proceedings;

Article 389, which vests the President of the Supreme Court of the Russian Federation, the Deputy President of the Supreme Court of the Russian Federation with the power to lodge, to the Presidium of the Supreme Court of the Russian Federation, a reasoned motion for supervisory review of the judicial decisions in order to ensure unity of judicial practice and legality.

2. According to the Constitution of the Russian Federation, the right to judicial protection and access to justice belongs to fundamental and inalienable rights and freedoms of man. It is also a guarantee for all other rights and freedoms; it is recognized and guaranteed by the generally recognized principles and norms of international law (Articles 17 and 18; Article 46; Article 52, Sections 1 and 2).

It follows from the cited provisions, from Article 14 of the International Covenant on Civil and Political Rights and from Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms that administration of justice by itself shall provide for effective restoration of the rights and meet the requirements of fairness.

2.1. Pursuant to Section 4, Article 15 of the Constitution of the Russian Federation, the generally recognized norms of international law and international treaties of the Russian Federation shall be an integral part of its legal system, and the international treaties of the Russian Federation shall have priority over the laws in case of contradiction between them.

By ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms, the Russian Federation recognized the jurisdiction of the European Court of Human Rights as obligatory in questions concerning the interpretation and application of the Convention and Protocols to it in cases of alleged violation by the Russian Federation of provisions of the mentioned instruments (Federal Law No. 54-Φ3 of 30 March 1998). Thereby, like the Convention for the Protection of Human Rights and Fundamental Freedoms, the judgments of the European Court of Human Rights – to the extent that they interpret the substance of the rights and freedoms provided for by the Convention, relying on the generally recognized principles and norms of international law, including the right to access to court and fair justice – are an integral part of the legal system of the Russian Federation. That is why they shall be taken into account by the federal legislator in regulating social relations and by the law-enforcement authorities in applying the respective norms of the law.

2.2. Revealing the constitutional meaning of the right to judicial protection, the Constitutional Court of the Russian Federation expressed the following legal opinions: the absence of a possibility to review a wrongful judicial act does not meet the requirement of effective restoration of rights through administration of justice, which is universal in judicial proceedings meeting the requirements of fairness; the absence of such possibility derogates and restricts the present right; within the framework of judicial protection of rights and freedoms, there is a possibility of judicial review of decisions and actions (inaction) of any state authorities, including judicial authorities (Judgments No. 4-II of 2 February 1996 in the case concerning the review of the constitutionality of the provisions of Articles 371, 374 and 384 of the Criminal Procedure Code of the RSFSR, No. 5-II of 3 February 1998 in the case concerning the review of the constitutionality of the provisions of Articles 180, 181, 187 and 192 of the Administrative Offences Code of the Russian Federation, and others).

By guaranteeing everyone's right to judicial protection of his rights and freedoms and the right to appeal to the court against decisions of state authorities, including judicial authorities, the Constitution of the Russian Federation does not directly stipulate a procedure of judicial review of judicial decisions upon complaints of the interested persons. Such procedure is determined by the federal law on the basis of the Constitution of the Russian Federation. The federal legislator, who has a relatively wide discretion in establishing a system of judicial instances, sequences and procedures of appeal, grounds for annulment or amendment of judicial decisions by superior courts, powers of the courts of superior instances, in any case should exercise respective regulation relying on the constitutional aims and values, the generally recognized principles and norms of international law and international obligations of the Russian Federation and to provide persons participating in proceedings with procedural guarantees.

3. With the aim to establish a mechanism of effective restoration of violated rights, the federal legislator prescribed procedures for reviewing judicial decisions in the Civil Procedure Code of the Russian Federation: proceedings in the court of second instance, appellate or cassation, which examines cases upon complaints (requests) against judicial decisions which are not final yet; and review of final judicial decisions in supervisory review proceedings and under newly discovered circumstances.

In the legal system of the Russian Federation, the institution of review of judicial decisions in civil cases by way of supervisory review (Chapter 41 of the Civil Procedure Code of the Russian Federation) is based on provisions of the Constitution of the Russian Federation, namely on Article 46, which, in conjunction with Articles 15 (Section 4) and 17 (Sections 1 and 3), presumes, as generally accepted in a rule of law state, the possibility of reviewing final judicial acts in case of fundamental mistakes, and on Article 126, according to which the

Supreme Court of the Russian Federation as the supreme judicial body in civil, criminal, administrative and other cases within the jurisdiction of courts of general jurisdiction shall carry out judicial supervision over their activities according to the procedural forms prescribed by federal law and shall provide clarifications on issues of judicial practice.

The Federal Constitutional Law “On the Judicial System of the Russian Federation” specifying the mentioned constitutional provisions determines the powers of the Supreme Court of the Russian Federation and other federal courts of general jurisdiction in examining civil cases by way of supervisory review. The Civil Procedure Code of the Russian Federation provides for the right of persons participating in a case and of other persons, if their rights and lawful interests have been infringed by court decisions, to appeal against judicial decisions (except if rendered by the Presidium of Supreme Court of the Russian Federation) to the supervisory instance court within one year from the date these decisions became final (Article 376).

3.1. Elaborating on the constitutional nature of supervisory proceedings as an institution of law, which is intended by the federal legislator to remedy judicial mistakes in final judicial acts, the Constitutional Court of the Russian Federation formulated the following legal opinions in a number of decisions, including Decision No. 5-II of 11 May 2005 in the case concerning the review of the constitutionality of Article 405 of the Criminal Procedure Code of the Russian Federation and No. 11-II of 17 November 2005 in the case concerning the review of the constitutionality of Section 3, Article 292 of the Administrative Offences Code of the Russian Federation.

The supervisory review of final judicial acts is possible only as an additional guarantee of lawfulness of such acts, and it presumes determination of special grounds and procedures for these proceedings corresponding to its legal nature and purpose. The final judicial act may be amended or annulled on supervision only in exceptional circumstances, when, in the result of a mistake which was made in the course of previous proceedings and which predetermined the outcome of the case, the rights and lawful interests, which may be protected in courts, were significantly violated and cannot be restored without elimination or amendment of the wrongful judicial act.

From the Constitution of the Russian Federation follows the necessity of legislative determination of the grounds, conditions, procedure and time limits for review of final judicial acts, since other arrangement, like excessive or undetermined time limits, imprecise and unclear grounds for review, would lead to instability of legal relations, arbitrary alteration of the legal status of the participants in the mentioned relations determined by judicial acts, create uncertainty both in substantive legal relations under dispute and in procedural relations concerning disputes resolved in courts. Prescribing time limits for procedural actions and

clarifying procedural relations, the federal legislator shall also ensure exercise of the case participants' rights on the basis of a balance between the right to fair trial, which presumes a possibility of remedying, by way of supervisory review, of significant violations which influenced the outcome of the case, on the one hand, and the principle of legal certainty on the other.

3.2. The right to judicial protection, which is guaranteed by the Constitution of the Russian Federation, implies the State creating the necessary conditions for effective and fair proceedings, namely in the court of first instance where all issues which are significant for the determination of the parties' rights and obligations are to be resolved. Mistakes made by the first instance court shall be remedied by the court of second instance in procedures which are most approximated to proceedings in the court of first instance. At the same time, as follows from the legal opinion expressed by the Constitutional Court of the Russian Federation in Judgment No. 11-II of 17 November 2005, the right to fair trial within a reasonable time limit by an independent and impartial court also presumes finality and stability of final judicial acts and their enforcement; that is why the main burden of reviewing decisions of first instance courts is transferred to regular (ordinary) judicial instances, appellate and cassation.

The proceedings for reviewing final judicial decisions as an additional means of ensuring lawfulness of judicial decisions imply a possibility of its use only if interested persons have exhausted all regular (ordinary) ways of appeal against decisions before they became final. Refusal to use the indicated means by the interested person shall, in the opinion of the European Court, prevent supervisory review (Judgment in the case *Nelyubin v. Russia*, of 2 November 2006, §§ 28–30).

As review of final judicial acts presents in itself a possibility of overcoming the finality of those acts, the legislator shall stipulate such institutional and procedural conditions for their supervisory review which meet the requirements of procedural effectiveness, economy in use of judicial remedies, transparency of administration of justice, and which exclude a possibility of prolongation or unreasonable renewal of judicial proceedings and therefore ensure fairness of judicial decision and, in addition to that, legal certainty, including recognition of the legal power of judicial decisions, their irrefutability (*res judicata*), without which a balance between public law and private law interests cannot be reached.

4. Article 387 of the Civil Procedure Code of the Russian Federation stipulates that significant violation of norms of substantive or procedural law is a ground for annulment or amendment of inferior court decisions on supervisory review. The federal legislator's use of such assessment criterion as significance of violation, is predetermined by the multiplicity of circumstances proving presence of these grounds, makes it impossible to list them in a law, and

cannot in itself be considered impermissible. Providing the supervisory court with a certain discretion in deciding on the presence or absence of grounds for annulment or amendment of judicial decisions on supervisory review, provided that the interpretation of this norm in law-enforcement practice is uniform, does not contradict the principle of access to court and corresponds to the role, place and powers of a court as an independent authority of justice.

In accordance with the established judicial practice, significance of violation of procedural law norms is established by the supervisory instance court according to the rules of Article 364 of the Civil Procedure Code of the Russian Federation, while violation of substantive law norms is established according to the rules of Article 363 of the Civil Procedure Code of the Russian Federation. Significance of these violations is assessed and recognized with regard to specific circumstances of the case and significance of outcomes of the violations for the person in whose respect they were made (Subsections 24 and 25, Decree of the Plenum of the Supreme Court of the Russian Federation No. 2, “On Certain Issues in Relation to Adoption and Entry into Force of the Civil Procedure Code of the Russian Federation” of 20 January 2003).

Within the meaning of Article 387 of the Civil Procedure Code of the Russian Federation taken in conjunction with the Convention for the Protection of Human Rights and Fundamental Freedoms and giving regard to the legal opinions of the Constitutional Court of the Russian Federation, not each violation indicated in Articles 363 and 364 of the Civil Procedure Code of the Russian Federation can be recognized as significant, which is a ground for annulling or amending judicial decisions on supervisory review. Its significance as a ground for annulling or amending judicial decisions on supervisory review shall be assessed taking into account the essence, purpose, and aims of the supervisory proceedings themselves.

Grounds for the annulment or amendment of final judicial decisions shall correspond to constitutionally significant aims and, pursuant to the principle of proportionality, shall not violate the balance between the fairness and stability of the judicial decision. Since supervisory review of judicial decisions is an additional guarantee of exercising the constitutional right to judicial protection and lawfulness of judicial decisions, when all remedies in courts of general jurisdiction of first and second instance are exhausted, the grounds of such review shall not open a possibility of supervisory proceedings only with the aim to remedy the judicial mistakes, which should be corrected in regular (ordinary) judicial proceedings for review of judicial decisions which are not final.

Annulment or amendment of judicial decisions on supervisory review is possible only if, as a result of judicial mistake which occurred in prior proceedings and influenced the outcome of the case, there is a significant violation of rights and freedoms of man and citizen, rights and freedoms of unspecified number of persons, and other public interest protected by the law. A

different opinion of the court of supervisory review instance regarding the outcome of the proceedings cannot be the only ground for the annulment or amendment of an inferior court decision. As was repeatedly stated by the European Court of Human Rights in its judgments concerning supervisory proceedings on civil cases in the Russian Federation, the principle of *res judicata* presumes that no party is entitled to seek a review of a final and binding decision merely for the purpose of a rehearing and a fresh decision of the case; the mere possibility of two views on the subject is not a ground for re-examination (Judgment in the case *Ryabykh v. Russia* of 24 July 2003, § 52). Other approach would lead to disproportional restriction of the principle of legal certainty.

5. Chapter 41 of the Civil Procedure Code of the Russian Federation, which regulates proceedings in supervisory instance courts, provides, in Articles 381–383, for preliminary examination of the supervisory review complaint (request) by a judge. At this stage of supervisory proceedings, which is a procedure of admission (filtering) of supervisory review complaints (requests), the issue of transferring the case to the supervisory instance court for consideration on the merits is considered.

The introduction of this preliminary procedure, where certain procedural rules which are obligatory at other stages are inapplicable, in particular, notification and summoning of parties, having a hearing etc., is predetermined by the aim to ensure a balance between public and private interests; to prevent transformation of the supervisory instance court into a regular judicial instance; and to preclude evidently unreasonable applications. This approach corresponds to the case law of the European Court of Human Rights, which recognizes a possibility of restricting the right to access to court, in particular, in determining the admissibility of an application complaint, provided that this right is not restricted in such a way or to such an extent as to affect its essence; permissible restrictions of the mentioned right shall have a legitimate purpose, and reasonable proportionality must exist between the means used and the purposes pursued.

In itself, the introduction of preliminary procedure for review of supervisory review complaints (requests), where the legal grounds for further proceedings on the case are determined (requesting to send the record of a case (*certiorari*), transferring the case for consideration on the merits by the supervisory instance court) on the basis of arguments of the complaint (request) and substance of judicial decisions which are appealed against (materials of the requested case), conforms to the legal nature and purpose of supervisory review proceedings. It cannot be recognized incompatible with the right of each person to judicial protection and a fair trial, taking into account that during consideration of the case on the merits by the supervisory instance court the basic procedural principles and guarantees are observed in respect of the parties and other participants of the case. Moreover, within the meaning of Articles 381–

383 of the Civil Procedure Code of the Russian Federation, in any case a reasoned decision shall be adopted (both concerning the presence or absence of grounds for granting certiorari and concerning the presence or absence of grounds for transferring the case to the supervisory instance court for consideration on the merits).

Any other procedure of considering supervisory complaints (requests) with a hearing, ensuring presence of persons participating in the case, hearing their arguments and objection would significantly extend the time frame for this stage of review, which is designed solely to preclude evidently unreasonable applications from consideration by supervisory courts. At the same time, relying on the constitutional requirement of equality of rights to judicial protection and regarding the right of persons who did not lodge a supervisory review complaint (request) to have a legitimate expectation that the final decision is in force, it is mandatory to notify the mentioned persons about an appeal against the judicial decision and about transferring the case to the supervisory instance court for consideration on the merits (Section 1, Article 385 of the Civil Procedure Code of the Russian Federation).

The provision of Section 2 and 3, Article 381, and Section 2, Article 382 of the Civil Procedure Code of the Russian Federation, which prescribe preliminary examination of the supervisory review complaint (request) by a single judge, in conjunction with Section 1, Article 376, Section 2, Article 378, Article 379 and 387 of the Code do not provide for a possibility to render an arbitrary decision. A judge shall analyze judicial decisions which are appealed against and arguments on violation of the law which are stated in the complaint (request) and grant certiorari if, upon examination of the submitted materials, he has doubts as to the lawfulness of the rendered decisions. If, after examination of the case where certiorari was granted, a judge believes that there are grounds prescribed by law to annul or amend the judicial act which is appealed against by way of supervisory review, he shall transfer the case to the supervisory instance court for consideration on the merits.

Examination of the supervisory review complaint (request) by a single judge in a case where certiorari was granted conforms to the constitutional principles of justice, does not restrict or violate the constitutional right to judicial protection. Moreover, the Constitutional Court of the Russian Federation has repeatedly stated that a new decision which determines the parties' rights and obligations in a new manner is not rendered at the stage of preliminary examination of supervisory complaints (requests) by a judge.

In addition, the federal legislator's right to provide for collective examination of the issue of presence or absence of grounds for transferring the case to the supervisory court is not precluded, as it is determined by the Arbitration Procedure Code of the Russian Federation (Section 1, Article 299).

6. Pursuant to Section 6, Article 381, and Section 2, Article 383 of the Civil Procedure Code of the Russian Federation, the president of the supreme court of the republic, territory, region and other courts equal to them, the President of the Supreme Court of the Russian Federation, the Deputy President of the Supreme Court of the Russian Federation has the power to disagree with the judge's decision to deny certiorari or to deny transfer of the case to the supervisory instance court for consideration on the merits, and to issue their own decision to grant certiorari, transfer the case to the supervisory instance court for consideration on the merits.

Within the meaning of the mentioned provisions taken in conjunction with other provisions of Chapter 41 of the Civil Procedure Code of the Russian Federation, the cited power can be exercised only under an appropriate petition of the person who lodged the supervisory complaint (request). Such a petition may be recognized as appeal against the decision rendered by a judge and is in itself a separate stage of proceedings in the supervisory instance court, which is admissible only within the time limits prescribed by Section 2, Article 376 of the Civil Procedure Code of the Russian Federation. The president of the supreme court of the republic, territory, region and other courts equal to them, the President of the Supreme Court of the Russian Federation, the Deputy President of the Supreme Court of the Russian Federation, in case of a petition by an interested person, shall render a decision according to the same procedure, with the same time limits, relying on the same grounds which are prescribed by the Civil Procedure Code of the Russian Federation for the judge deciding to grant certiorari or to transfer the case for consideration on the merits to the supervisory instance court. Otherwise it would be a procedural activity unregulated by law.

At the same time such a petition to the mentioned officials, after a judge renders a decision to deny certiorari or to deny transferring the case to the supervisory instance court, may not be considered as a mandatory condition for further appeals against judicial decisions to the superior supervisory instance. Otherwise it would lead to unreasonable increase in the number of supervisory review instances and would not conform to the principle of legal certainty and purpose of supervisory proceedings as an additional means of ensuring lawfulness of judicial decisions.

7. Article 377 of the Civil Procedure Code of the Russian Federation provides for a possibility to lodge supervisory complaints (requests) with three judicial instances, namely the presidium of the supreme court of a republic, territory, region and other court equal to them, the Judicial Section for Civil Cases of the Supreme Court of the Russian Federation or the Military Section of the Supreme Court of the Russian Federation, and the Presidium of the Supreme Court of the Russian Federation.

The jurisdiction and procedure for lodging a supervisory review complaint (request), which are determined by the mentioned Article, differ according to which court considered the case as the first instance. Thus for judicial orders, decisions and judgments of Justices of the Peace and appellate decisions and judgments of district courts, the presidium of the supreme court of a republic, territory, region and other courts equal to them are courts of supervisory instance (Subsection 1, Section 2). Their decisions in turn may be appealed against by interested persons to the Judicial Section for Civil Cases of the Supreme Court of the Russian Federation (Subsection 3, Section 2). A decision of this chamber may be appealed against to the Presidium of the Supreme Court of the Russian Federation provided that such a decision violates the unity of judicial practice (Subsection 5, Sections 2 and 6).

Within the meaning of Subsection 3, Section 2, Article 377 of the Civil Procedure Code of the Russian Federation taken in conjunction with the other provisions of that Article, submitting a supervisory review complaint (request) against judicial decisions in cases which are under the jurisdiction of Justices of the Peace to the Judicial Section for Civil Cases of the Supreme Court of the Russian Federation is permitted only where the case was previously examined by way of supervisory review by the presidium of the supreme court of a republic, territory, region and other courts equal to them on the merits. If a judge of the supreme court of a republic, territory region and other courts to them denies certiorari or transfer of the case for consideration on the merits to the presidium of this court and when the president of the court certifies lawfulness of such denials, an interested person has no possibility to submit a complaint (request) against orders, decisions and judgments of Justices of the Peace and appellate decisions and judgments of district courts to superior supervisory review instances, namely to the Judicial Section for Civil Cases of the Supreme Court of the Russian Federation and further to the Presidium of the Supreme Court of the Russian Federation.

Thereby, possibilities for supervisory complaints against judicial decisions of Justices of the Peace and courts of appellate instance, contrary to all other final decisions, are limited and depend on the results of complaint (request) examination by the first supervisory review instance which is the presidium of the supreme court of a republic, territory, region and other courts equal to them.

The mentioned differentiation results from the specificity of cases, which by the law are placed under the jurisdiction of Justices of the Peace. The federal legislator relying on his discretionary powers to determine the means and procedures of judicial protection, providing for effectiveness of justice, being guided by principles of procedural economy and stability of judicial decisions, has the right to establish such procedure for review of the lawfulness and reasonableness of judicial decisions as to take into account the specificity of civil cases which

are examined by Justices of the Peace. In particular, it may be considered that these courts have jurisdiction over cases which are less significant in terms of the nature and amounts of claims than civil cases under the jurisdiction of other courts of first instance (Decision of the Constitutional Court of the Russian Federation No. 110-O of 15 May 2002).

Such limitation of possibilities for supervisory review of decisions of Justices of the Peace is compensated by the existence of the appellate procedure for their review. It meets the aims of ensuring correspondence of the protected rights and procedural costs, including the costs of organizing supervisory proceedings, and permits to avoid excessive overloading of the Supreme Court of the Russian Federation with cases of lesser significance. Considering that the federal legislator is obliged to exercise legal regulation following socially valid criteria for determination of jurisdiction, the arrangement mentioned above cannot be considered as impermissible and violating the constitutional requirement of equality of everyone before the law and court. Besides, pursuant to Article 389 of the Civil Procedure Code of the Russian Federation, review of judicial decisions in cases which are under the jurisdiction of Justices of the Peace is not precluded in order to ensure unity of judicial practice and legality.

The provisions of Article 23 of the Civil Procedure Code of the Russian Federation, which determine the categories of civil cases to be considered by Justices of the Peace as a court of first instance, are not a subject of consideration for the Constitutional Court of the Russian Federation in the present case since the applicants did not challenge them. Consequently, the Constitutional Court of the Russian Federation does not have the power to review the reasonableness of ascribing certain cases to the jurisdiction of Justices of the Peace.

8. Article 389 of the Civil Procedure Code of the Russian Federation, which provides for the power of the President of the Supreme Court of the Russian Federation or of the Deputy President of the Supreme Court of the Russian Federation to lodge, with the Presidium of the Supreme Court of the Russian Federation, a reasoned motion for supervisory review of judicial decisions in order to ensure unity of judicial practice and legality, establishes a special procedure of instituting supervisory review of judicial decisions. This procedure exists in addition to the general regulation of preliminary proceedings in supervisory instance established by Articles 381–383 of the Code. This procedure is designed exceptionally for cases where without correcting significant violations of substantive and procedural law norms made by inferior courts it is impossible to ensure supremacy and uniform application of law pursuant to the requirements of the Constitution of the Russian Federation, including its Articles 15, 19, 120 and 126.

At the same time, by lodging a motion for supervisory review of final judicial decisions by the mentioned officials of the Supreme Court of the Russian Federation, the rights of persons participating in the case as was determined in such decisions are affected. Meanwhile, it follows

from the constitutional principles of adversary proceedings and equality of the parties and principle of dispositiveness related to them that procedural relations in civil proceedings are created, altered and terminated primarily on the initiative of the direct participants in the substantive legal relation under dispute. They may dispose of their procedural rights with the assistance of the court and the substantive right under dispute. At the same time, judicial proceedings shall be designed in such a way as to separate the court's function of case consideration from the functions of the parties who have a dispute before the court: administering justice as its exclusive function (Article 118, Section 1 of the Constitution of the Russian Federation), the court must ensure fair and impartial resolution of the dispute, providing the parties with equal opportunities to support their positions, and that is why it may not undertake their procedural functions (Judgment of the Constitutional Court of the Russian Federation No. 4-II of 14 February 2002 in the case concerning the review of the constitutionality of Article 140 of the Civil Procedure Code of the RSFSR and No. 19-II of 28 November 1996 in the case concerning the review of the constitutionality of Article 418 of the Criminal Procedure Code of the RSFSR, Decision of 13 June 2002 No. 166-O). This approach was also reflected in the recommendatory Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary (adopted on 24 May 1989 by the Economic and Social Council of the United Nations, Resolution 1989/60). Pursuant to the said Procedures, in particular, no judge shall be required to perform services that are inconsistent with his independent status.

Consequently, the President of the Supreme Court of the Russian Federation or the Deputy President of the Supreme Court of the Russian Federation as judges cannot file motions for supervisory review of judicial decisions on their own initiative. Any other arrangement would result in a distortion of the nature of administration of justice, principle of adversarial proceedings and equality of parties in judicial proceedings (Article 123, Section 3 of the Constitution of the Russian Federation), and the principle of dispositiveness in the civil proceedings.

In cases where the President of the Supreme Court of the Russian Federation or the Deputy President of the Supreme Court of the Russian Federation, upon petitions of interested persons, lodge a respective motion based on their opinion that the rendered judicial decisions violate the unity of judicial practice and legality, they cannot further enter the composition of the court considering the case on the merits. Their participation in the consideration of the case by the Presidium of the Supreme Court of the Russian Federation would prejudice the impartiality of the court and would not conform to the principle of independence of judges. The analogous position was formulated by the European Court of Human Rights, which, in § 97 of the judgment

of 9 November 2004 in the case of *Svetlana Naumenko v. Ukraine*, indicated that practice in accordance to which the deputy president of a court as a member of the presidium and deputy president of the presidium considers the protest brought by himself incompatible with the “subjective impartiality” of the judge hearing a particular case since no one can be both a plaintiff and a judge in his own case.

Thus in the light of the constitutional principles of civil proceedings, the President of the Supreme Court of the Russian Federation or the Deputy President of the Supreme Court of the Russian Federation may exercise the power provided to them by Article 389 of the Civil Procedure Code of the Russian Federation only subject to a petition of interested persons (including those who, under the law and due to their status, have the right to appeal in defence of public interests), in compliance with the general rules of Chapter 41 of the Code, *inter alia* within time limits provided for by Section 2, Article 376, Section 1, Article 381 and Section 1, Article 382 for appeal of judicial decisions to the supervisory review instance, granting certiorari and rendering a decision based on the results of the consideration of the requested case. At the same time, the President of the Supreme Court of the Russian Federation or the Deputy President of the Supreme Court of the Russian Federation who lodged a motion cannot participate in the consideration of the respective case on the merits by the Presidium of the Supreme Court of the Russian Federation.

A different interpretation of Article 389 of the Civil Procedure Code of the Russian Federation would lead to its arbitrary application and consequently to uncertainty in substantive legal relations under dispute and procedural legal relations which appeared in connection with judicial proceedings; equally it would lead to unlimited judicial review of final judicial decisions, which violates both the principles of a fair trial and the principle of legal certainty and thus results in unlawful restriction of the constitutional right to judicial protection, which does not conform to the requirements of Article 19 (Sections 1 and 2), 46 (Sections 1 and 2), 55 (Section 3), 118 (Section 1) and 123 (Section 3) of the Constitution of the Russian Federation.

However, pursuing the aim of ensuring uniform application of law and being guided by the Constitution of the Russian Federation and the present Judgment, the federal legislator reforming supervisory proceedings, *inter alia* procedures of instituting supervisory review of judicial decisions by the Presidium of the Supreme Court of the Russian Federation, shall specify the procedure for the exercise of the powers provided for in Article 389 of the Civil Procedure Code of the Russian Federation.

9. The general legal principle of legal certainty implies stability of legal regulation and enforceability of judicial decisions. That is why in determination of the grounds for appeal and review of final judicial acts, time limits for such appeals and court instances which are

competent to consider the respective complaints (requests), due to the mentioned principle the legislator shall be guided by the fact that participants in civil relations shall have a possibility to foresee consequences of their conduct to a reasonable extent and to be sure of stability of their officially recognized status, acquired rights, and obligations.

9.1. The procedure for supervisory review of final judicial decisions, as follows from Chapter 41 of the Civil Procedure Code of the Russian Federation (Articles 376, 377, 381, 382, 383 and 389 taken in conjunction) permits a possibility to lodge a supervisory review complaint (request) and review the judicial decision in three judicial instances successively within one year from the date on which the decision becomes final. Meanwhile, according to the established law-enforcement practice, this time limit does not include either the period of consideration of the supervisory review complaint (request) or the period of consideration by the supervisory instance court of the case where certiorari was granted. The period when the missed time limit for appeal may be restored is not defined either (Section 4, Article 112 of the Civil Procedure Code of the Russian Federation).

Consequently, pursuant to the civil procedure law of the Russian Federation in force, review of final judicial decisions upon supervisory review complaints (requests) may take place not only repeatedly, but also in the course of an indefinitely long period of time.

With regard to judicial systems which are based on such regulation, judgments of the European Court of Human Rights note that the procedures which provide for a possibility to appeal against judicial decisions within an unlimited period of time or significantly lengthy time limit, including uncertainty of the time limits for examination of the cases by the supervisory review court, lead to uncertainty and instability of final decisions; such procedures are incompatible with the principle of legal certainty, which is one of the fundamental aspects of rule of law, and the right to fair trial judgments in the cases of *Brumărescu v. Romania* of 28 October 1999, §§ 61–62, *Sovtransavto Holding v. Ukraine* of 25 July 2002, § 77, *Ryabykh v. Russia* of 24 July 2003, §§ 51 and 54, *Kekhaya v. Bulgaria* of 12 January 2006, §§ 63 and 69, *Zasurtsev v. Russia* of 27 April 2006, § 49, and others).

Within the mentioned circumstances, in the opinion of the European Court of Human Rights, recognition of supervisory review proceedings as an effective domestic remedy which should be exhausted for observance of admissibility criterion for application with the European Court of Human Rights, would create legal uncertainty and render nugatory the six-month rule (judgments in the cases of *Berdzenishvili v. Russia* of 29 January 2004, *Denisov v. Russia* of 6 May 2004).

9.2. As follows from Article 118 (Section 2) of the Constitution of the Russian Federation in its conjunction with Articles 126 and 127, civil proceedings through which judicial power is

administered by courts of general jurisdiction and arbitration courts shall, in its principles and general features, be uniform for these courts.

In commercial court proceedings (Articles 292, 295, 299 and 303 of the Arbitration Code of the Russian Federation), there is no multiplicity of supervisory instances (only the Presidium of the Supreme Commercial Code of the Russian Federation has the power to review the final judicial acts of commercial courts), and there is no possibility of repeated supervisory review of judicial acts and the time limits are strict. A complaint (request) seeking review shall be lodged within no more than three months from the date when the last appealed judicial act became final, and the issue of instituting proceedings upon a complaint (request) shall be considered within five days. The issue of whether the grounds for review of the case and transferring it to the Presidium of the Supreme Commercial Court of the Russian Federation for consideration on the merits are present shall be considered within one month, and the case shall be considered on the merits within not more than three months from the date when the decision to transfer the case to the Presidium was rendered.

In contrast, the Civil Procedure Code of the Russian Federation provides for more prolonged time limits: one year from the date when the judicial decision became final to lodge a complaint (request) with the court of supervisory review instance; not more than one month for the supervisory instance court to examine the supervisory review complaint (request), not more than one month (not more than two months for the Supreme Court of the Russian Federation) for the judge to examine the case where certiorari was granted and decide on transfer to the supervisory instance court for consideration of the merits, not more than four months for a judge of the Supreme Court of the Russian Federation to do the same (this time limit can be prolonged respectively for four and six months), and finally not more than two months to consider the case on the merits for the supreme court of a republic, territory, region and other courts equal to them, not more than three months for the Judicial Section for Civil Cases of the Supreme Court of the Russian Federation and for the Military Section of the Supreme Court of the Russian Federation, not more than four months for the Presidium of the Supreme Court of the Russian Federation. Given that supervisory review proceedings can take place consecutively in three judicial instances, the whole procedure of supervisory review giving regard to the cumulative effect of such regulation can last several years, which does not correspond to the principles of legal certainty and stability of judicial acts provided for by the Constitution of the Russian Federation.

At the same time, recognition of the respective norms of the Civil Procedure Code of the Russian Federation as non-conforming to the Constitution of the Russian Federation and void would create such regulatory gap that in the present case cannot be remedied by direct

application of the Constitution of the Russian Federation and that requires systemic amendments to the legislation on the judicial system and civil proceedings in force.

Since supervisory instance courts annul and amend a significant number of judicial decisions of inferior courts now, providing remedy to significant judicial mistakes and protection for violated rights, abolition of the operating supervisory procedures without simultaneously creating a system for timely prevention and remedy of judicial mistakes would lead to procedural law vacuum. Not only the operation of the supervisory instance courts, but civil proceedings as a whole would be disorganized, which would put in jeopardy the exercise of the main function of justice – providing effective remedying of violated rights and freedoms of man and citizen.

That is why the principle of legal fairness, which follows from the preambles of Articles 1 (Section 1), 2, 15 (Sections 1 and 4), 17, 18, 19, 46 and 118 of the Constitution of the Russian Federation, and the principle of fairness of judicial acts based on the abovementioned principle, as a necessary condition for judicial protection of the rights and freedoms of man and citizen oblige the Constitutional Court of the Russian Federation, with the aim to protect the fundamentals of the constitutional order of the Russian Federation, the rights and freedoms of man and citizen, maintain a balance of constitutionally protected values and giving regard to objectively formed realities, in the present case to abstain from recognizing Article 376, Subsection 3, Section 2, Article 377, Sections 2, 3 and 6, Article 381, Section 2, Article 382, Section 2, Article 383, Articles 387 and 389 of the Civil Procedure Code of the Russian Federation, as non-conforming to the Constitution of the Russian Federation to the extent that they determine a multiplicity of supervisory review instances, possibility of repeated reconsideration of supervisory review decisions, indeterminacy of the time limits for supervisory complaints and supervisory proceedings.

Supervisory proceedings in the existing system of judicial instances can be considered necessary to ensure a balance between such constitutionally protected values as fairness and stability of judicial acts only during a transitional period until a new regulation is adopted. Giving due regard to this fact, the federal legislator shall, within a reasonable time, establish review proceedings that actually ensure timely discovery and review of wrongful judicial decisions before they become final, and it shall take into account legal opinions of the European Court of Human Rights and Resolution of the Committee of Ministers of the Council of Europe of 8 February 2006 (ResDH (2006) 1). The federal legislator, relying on the Constitution of the Russian Federation and with regard to the present Judgment, shall also bring the regulation of supervisory review proceedings in conformity with the international standards recognized by the Russian Federation.

9.3. The Civil Procedure Code of the RSFSR did not provide citizens with the right to directly appeal to the court of supervisory instance. Supervisory review proceedings were initiated only under a *protest* of judicial and prosecutorial officials. Correspondingly, entry of a judicial decision into force simultaneously meant that the person has exhausted all domestic remedies in determining his rights and obligations (except if he applied to the Constitutional Court of the Russian Federation with a complaint against violation of his constitutional rights by the law which was applied or was to be applied).

Such an understanding was shared both by the Constitutional Court of the Russian Federation when it reaffirmed the citizens' right to apply to the European Court of Human Rights against final judicial act regardless of whether this act was an object of supervisory review, and by the European Court of Human Rights which expressed its legal opinion that the six-month period for application to this Court by citizens of the Russian Federation shall be calculated from the moment when the judicial act became final and it is not interrupted if the supervisory review proceedings are initiated.

Pursuant to the Civil Procedure Code of the Russian Federation in force, which stipulated citizens' right to appeal against judicial decisions to the supervisory instance court, when a judge, after granting certiorari upon a claim in the complaint, request or other motion, discontinues the enforcement of the judicial decision appealed against until the supervisory proceedings are finished, this act is not implemented in specific legal relations. As such, this act cannot acquire a characteristic of finality (all the more so, as the supervisory instance court unlike the European Court of Human Rights has the power not only to establish a fact of violating a right, but to annul the judicial decision which led to such violation), and, consequently, until the supervisory instance court renders the respective decision, available domestic remedies shall not be considered as exhausted within the meaning of Article 46 (Section 3) of the Constitution of the Russian Federation.

Thus, the interested persons are going to be able to apply to the European Court of Human Rights already after the proceedings in the supervisory instance court as an effective remedy, provided that the supervisory review proceedings in the result of the reforms by the federal legislator meet all necessary requirements which follow from the Constitution of the Russian Federation and the present Judgment.

Concluding from the above and pursuant to Articles 6 and 68, Section 1 and 2, Article 71, Articles 72, 75, 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 provision of Section 1, Article 376 of the Civil Procedure Code of the Russian Federation as conforming to the Constitution of the Russian Federation to the extent that the right which is provided for by this article to appeal against final judicial decisions to the court of supervisory review instance, which is granted to the participants in the case and other persons whose rights and lawful interests are violated by these judicial decisions, in the system of acting legal regulation of civil proceedings presents itself an additional guarantee of lawfulness of judicial decisions, if all possibilities of review of such decisions by way of regular judicial proceedings are exhausted.

2. To recognize Subsection 3, Section 2, Article 377 of the Civil Procedure Code of the Russian Federation, in the part which does not allow filing of a supervisory review complaint (request) against final judicial decisions of Justices of the Peace and court of appeal instance with the Judicial Chamber for Civil Cases of the Supreme Court of the Russian Federation as conforming to the Constitution of the Russian Federation, as in the system of acting legal regulation of civil proceedings, limitation of possibilities of supervisory complaint against the mentioned judicial decisions is connected with peculiarities of civil cases, which are under the jurisdiction of Justices of the Peace, and availability of appeal procedures of review of decisions rendered by them, taking into account that the legislator shall make sure that the reasonableness criterion of labeling civil cases under the jurisdiction of Justices of the Peace is observed.

3. To recognize conjunct provisions of Sections 2 and 3, Article 381 and Section 2, Article 382 of the Civil Procedure Code of the Russian Federation as conforming to the Constitution of the Russian Federation, as on the strength of the constitutional principles of civil proceedings they do not allow an arbitrary refusal of the judge who examines a supervisory review complaint (request) to reclaim the case and its transfer to the supervisory instance court for consideration on the merits. These provisions oblige a judge in any case to transfer the case to the court of supervisory review instance if there are grounds for quashing or amending the appealed judicial decision, which are provided for by the statute, and exclude his rendering of unreasoned decisions as a result of examination of the supervisory review complaint (request) and reclaimed case.

4. To recognize the provisions of Section 6, Article 381 and Section 2, Article 383 of the Civil Procedure Code of the Russian Federation as conforming to the Constitution of the Russian Federation as in the system of acting legal regulation of civil proceedings it presumed that in accordance with the mentioned provisions of law the president of the supreme court of a republic, territory, region and equal court, the President of the Supreme Court of the Russian Federation, the Deputy President of the Supreme Court of the Russian Federation render a

decision on reclaiming the case and transferring it to the supervisory instance court for consideration on the merits only in case the same person who lodged the supervisory review complaint (request) applies following the same procedure, within the same time limits, basing on the same grounds which are stipulated for solving the corresponding issues by a judge during the examination of the supervisory review complaint (request) and reclaimed case.

5. To recognize Article 387 of the Civil Procedure Code of the Russian Federation as conforming to the Constitution of the Russian Federation, as in the system of the current regulation of civil proceedings it presumed that only such mistakes of interpretation and application of the law, without remedying of which effective restitution and protection of violated rights and freedoms and the protection of public interests protected by the law are impossible can be deemed significant violations of norms of substantive and procedural law as grounds for quashing or amending judicial decisions of inferior courts by way of supervisory review which are provided for by this article.

6. To recognize Article 389 of the Civil Procedure Code of the Russian Federation as conforming to the Constitution of the Russian Federation to such extent, to which it provides the power of the President of the Supreme Court of the Russian Federation, the Deputy President of the Supreme Court of the Russian Federation to bring to the Presidium of the Supreme Court of the Russian Federation a reasoned report on supervisory review of the judicial decisions with aims to ensure the unity of judicial practice and lawfulness may be realized only with the presence of application of interested persons under general rules of Chapter 41 of this Code, inter alia within the limits which are stipulated by Section 2, Article 376, Section 1, Article 381 and Section 1, Article 382 of time limits for appeal with the supervision instance, reclamation of the case and rendering of ruling by the results of examination. Meanwhile the President of the Supreme Court of the Russian Federation, the Deputy President of the Supreme Court of the Russian Federation to bring to the Presidium of the Supreme Court of the Russian Federation who brought the report, may not participate in the examination of the case by the Presidium of the Supreme Court of the Russian Federation.

During the reform of the supervisory review proceedings, including the procedures of initiating supervisory review of judicial decisions by the Presidium of the Supreme Court of the Russian Federation, the federal legislator shall specify the order of administration of the power provided for by Article 389 of the Civil Procedure Code of the Russian Federation, on the basis of the aims of providing unified application of law and being guided by the Constitution of the Russian Federation and by the present Judgment.

7. The constitutional law sense of provisions in Sections 2, 3 and 6, Article 381, Section 2, Article 382, Section 2, Article 383, Articles 387 and 389 of the Civil Procedure Code

of the Russian Federation which was ascertained in the present Judgment is obligatory for all and excludes any other interpretation of them in the law-enforcement practice.

8. In the present case, the Constitutional Court of the Russian Federation abstains from recognizing Section 1, Article 376, Section 3, Article 377, Sections 2, 3 and 6, Article 381, Section 2, Article 382, Section 2, Article 383, Articles 387 and 389 of the Civil Procedure Code of the Russian Federation in the mere in which they predetermine a multiplicity of supervisory review instances, a possibility of excessively long procedures of supervisory review and other deviations from the principle of legal certainty, as non-conforming to the Constitution of the Russian Federation.

This does not exempt the federal legislator from the obligation to establish, in the reasonable time limits, procedures which can really provide for timely detection and review of mistaken judicial decisions before they become final and to bring legal regulation of the supervisory proceedings in compliance with international law standards which are recognized by the Russian Federation, on the basis of requirements of the Constitution of the Russian Federation and the present decision.

9. To discontinue the proceedings -

on the complaint of M.-S. A. Abakarov, to the extent that it concerns the review of the constitutionality of Section 5, Article 381 of the Civil Procedure Code of the Russian Federation;

on the complaint of Y. Y. Oleynikova, to the extent that it concerns the review of the constitutionality of Section 5, Article 388 of the Civil Procedure Code of the Russian Federation;

on the complaint of R. P. Savelyeva, to the extent that it concerns the review of the constitutionality of Article 380 (2), (3) and (4) and Section 3 (4), Article 382 of the Civil Procedure Code of the Russian Federation;

on the complaint of E. A. Sizikov, to the extent that it concerns the review of the constitutionality of Subsection 3, Section 1, Article 16, Section 2 (1), Article 20, Article 112, Subsection 3, Section 2, Article 377 of the Civil Procedure Code of the Russian Federation.

10. The law-enforcement decisions in the cases of Nizhnekamskneftekhim OJSC and Khakasenergo OJSC and in the cases of M.-S. A. Abakarov, I. Z. Gafiyatullin, N. R. Gilmutdinov, Y. Y. Oleynikova, S. V. Ponomaryova, S. P. Savelyev, R. P. Savelyeva, E. A. Sizikov based on the provisions of Sections 2, 3 and 6, Article 381, Section 2, Article 382, Section 2, Article 383, Articles 387 and 389 of the Civil Procedure Code of the Russian Federation in the interpretation which contradicts the constitutional meaning established by the Constitutional Court of the Russian Federation in the present Judgment, are to be reconsidered by courts according to the established procedure if there are no other obstacles to it.

11. Pursuant to Sections 1 and 2, Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this 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 any other state body or official.

12. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be published in the Collection of Laws of the Russian Federation and *Rossiyskaya Gazeta*. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

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