

PLENARY SESSION OF THE RUSSIAN FEDERATION SUPREME COURT**RULING No. 1, 11 JANUARY 2007****Application by Courts of the Rules of Chapter 48 of the Russian Federation Code of Criminal Procedure¹ which Govern Proceedings before Supervisory-Review Instance**

(as modified by the Ruling of the Plenary Session No. 22, 29 October 2009)

In connection with questions arising with the courts in re-examining effective court judgments, findings, and rulings, in accordance with the procedure established by Chapter 48 of the CCRimP of Russia, the Plenary Session of the Russian Federation Supreme Court, guided by Article 126 of the Constitution of the Russian Federation, hereby rules to provide the following clarifications to courts:

1. In accordance with the requirements of Article 123, paragraph two of Article 125, paragraph two of Article 127, and Article 402 of the CCRimP of Russia, appeals against an effective criminal court judgment, finding, or ruling can be filed by: a suspect, an accused, a convicted person, an acquitted person, a person against whom criminal proceedings have been terminated, defence counsel, legal representatives or representatives thereof, a victim or a legal representative or representative thereof, a civil plaintiff or a civil defendant or representatives thereof (as regards the civil lawsuit), a procurator, a private prosecutor, and by other persons with regard to the portion of the court decision that affects their interests.

Petitions submitted to a supervisory-instance court by other individuals or entities to have effective court decisions re-examined by way of supervisory review procedure shall not be examined and shall be returned to the petitioners, with explanations of the law of criminal procedure.

2. Proceedings before the supervisory instance shall comply with the requirement of judicial structural hierarchy set forth by Article 403 of the CCRimP of Russia, whereby supervisory review appeals or representations, like criminal cases, shall first be reviewed by a lower supervisory-instance court and then by a higher supervisory-instance court. In the meaning of Article 406 of the CCRimP of Russia, preliminary proceedings in an appeal or representation in each supervisory instance shall be conducted in two phases: first a petition shall be examined by a judge, and then, if the appeal or representation is rejected, the judge's ruling can be reviewed by a person listed in paragraph four of Article 406 of the CCRimP of Russia. Therefore, a supervisory review appeal or representation may be accepted by a judge of a higher court only if the judge of a lower supervisory court has ruled to dismiss the appeal or representation and the president of that court, having reviewed the decision rendered by the judge of that court, let it stand, or if that court has taken a decision in accordance with the procedure set forth in Article 407 and/or Article 408 of the CCRimP of Russia.

3. A ruling by a judge of a district court (or, as the case may be, of a garrison military court) rendered by way of executing a judgment, regardless of the level of the court that delivered the judgment, can only be re-examined by way of supervisory review procedure subject to the requirement of judicial structural hierarchy set forth by Article 403 of the CCRimP of Russia, i.e. first an appeal against such ruling can be filed with the Presidium of the relevant Supreme Court of a Republic, a Territorial, Regional, or equal-status court, then with the Judicial Chamber on Criminal Cases of the Russian Federation Supreme Court (or, as the case may be, with the Military Chamber of the Russian Federation Supreme Court), and only after that — with the Presidium of the Russian Federation Supreme Court.

A supervisory review appeal or representation simultaneously challenging a judgment and a ruling of a judge rendered by way of executing the judgment shall be reviewed by a supervisory-instance court competent to re-examine the judgment, whether the execution decision was rendered by a district judge of the same or a different constituent region of the Russian Federation.

If, in examining a supervisory review appeal or representation received by the Russian Federation Supreme Court with a request to re-examine a judgment or subsequent judicial decisions, including a judge's ruling rendered by way of executing the judgment, a justice of the Russian Federation Supreme Court establishes legal grounds for re-examining only the judge's ruling rendered under Chapter 47 of the CCRimP of Russia, such justice shall institute supervisory review proceedings and transfer the petition to a

¹ Hereinafter cited as the CCRimP of Russia (*Editor's note*).

supervisory-instance court competent to re-examine such ruling. At the same time, the appeal or representation with regard to the request to re-examine the judgment shall be dismissed by such justice.

A supervisory review appeal or representation received by the Russian Federation Supreme Court, with a request to re-examine an execution ruling rendered by a district court judge (or, as the case may be, by a garrison military court judge) shall be transferred by a justice of the Russian Federation Supreme Court to the relevant lower supervisory-instance court, if the appeal or representation has not been examined by that court before.

4. An effective court decision rendered in the course of trial or pre-trial proceedings in a criminal case can be re-examined by way of supervisory review procedure under paragraph one of Article 125, paragraph two of Article 127, and Article 403 of the CCrimP of Russia.

By virtue of the constitutional provision fixed in paragraph one of Article 120 of the Constitution of the Russian Federation, no interference shall be permitted with courts' administration of justice, by higher courts or otherwise. Therefore, effective court decisions rendered in the course of pre-trial proceedings can only be re-examined by way of supervisory review procedure before the criminal case is taken to the first-instance court to be examined on its merits.

Court findings or rulings rendered under paragraph five of Article 355 of the CCrimP of Russia, except for monetary penalty findings or rulings, shall not be subject to supervisory appeal. The lawfulness and well-foundedness of such court decisions can be reviewed simultaneously with the review of lawfulness and well-foundedness of the concluding decision in the case.

5. In the meaning of paragraph one of Article 406 of the CCrimP of Russia, the time-limit set therein shall not include the criminal case file reclamation time.

A decision to reclaim a criminal case file by way of procedure envisaged by paragraph two of Article 406 of the CCrimP of Russia shall be based on the understanding that the case file shall be reclaimed in every instance where there are doubts as to the lawfulness, well-foundedness, or fairness of a judgment, or the lawfulness or well-foundedness of a court finding or ruling.

Persons who are competent to examine petitions seeking to re-examine effective judgments, court findings, or rulings may not refuse to reclaim criminal case files if the arguments in the appeal or representation are not refuted by the evidence in the court documents.

A decision to institute supervisory review proceedings without reclaiming the criminal case file may be taken where violations that cause the judgment or other court decision to be re-examined are found in the court decisions or other materials attached to the appeal or representation (the case has been examined by an invalid panel of the court, the convicted person is under the age of criminal liability, the prosecution limitation period has expired, etc.). In any event, a supervisory-instance court may not examine an appeal or representation without reclaiming the criminal case file.

6. If supervisory review proceedings are instituted pursuant to a petition by an appellant, e.g. a convicted person, then the convicted person's additional appeal and petitions from other appellants (the defence counsel, the victim, the procurator, and others) filed with regard to the convicted person on the same or different legal grounds after the decision is made to institute supervisory review proceedings, whether it is the initial or repeated petition, shall be transferred by the judge to the supervisory-instance court for examination, without a ruling to that effect to be rendered by such judge. The requirements of paragraph two of Article 407 of the CCrimP of Russia shall be observed with regard to every appeal or representation that are transferred to be examined by a supervisory-instance court.

7. While rendering a ruling to dismiss a supervisory review appeal or representation, the judge shall provide well-reasoned responses to all the arguments that challenge the lawfulness, well-foundedness, or fairness of the court decision and set forth the reasons why the arguments are found immaterial.

8. The law of criminal procedure obligates the judge-rapporteur to set forth the reasons for instituting supervisory review proceedings during examination of a criminal case by a supervisory-instance court (paragraph four of Article 407 of the CCrimP of Russia). Therefore, a procedural decision to institute supervisory review proceedings shall specify the violation committed in the course of the previous judicial proceedings and state whether the violation has or may have affected the lawfulness, well-foundedness, or fairness of the court decision being challenged. In deciding to institute supervisory review proceedings, a judge may not forejudge in the ruling the findings of the supervisory-instance court.

9. Persons empowered by Article 406 of the CCrimP of Russia to examine supervisory review appeals or representations may, by virtue of Article 6 and paragraph one of Article 410 of the CCrimP of

Russia, review the full criminal proceedings against the person who is the subject of the petition to re-examine a judicial decision.

If an examination of a supervisory review appeal or representation, the criminal case records (if the case file is reclaimed), or additional materials submitted finds that proceedings in the case involved violations that are not stated in the appeal or representation, but remediation thereof will improve the situation of the convicted person, the acquitted person, or the person against whom criminal proceedings have been terminated, the persons listed in Article 406 of the CCrimP of Russia shall be obliged to institute supervisory review proceedings.

10. The President or any Deputy President of the Russian Federation Supreme Court, the President of the Supreme Court of a Republic, the President of the Court of a Territory or Region, a Federal-Status City, an Autonomous Region, or an Autonomous Okrug, the President of the military court of a military district (or a fleet), in the meaning of Article 406 of the CCrimP of Russia read in conjunction with provisions of Article 15 of the CCrimP of Russia, may exercise her or his procedural powers in supervisory review proceedings only if a supervisory-instance court receives an appeal or representation that challenges the propriety of the findings of the judge who ruled to dismiss such appeal or representation. In such cases, the court shall examine both the appeal or representation previously dismissed by such judge and the appeal or representation that challenges the judge's decision, provided that such appeal or representation meets the requirements of Article 375 of the CCrimP of Russia.

If a person referred to in paragraph four of Article 406 of the CCrimP of Russia finds no grounds for quashing the judge's ruling to dismiss a supervisory review appeal or representation, that person shall notify the petitioner seeking re-examination of the judicial decision accordingly, in writing. In that case, no procedural decision is required by the law.

11. If the presidium does not include a competent panel of judges, the presiding judge shall be obliged not to examine the case and forward the appeal or representation (along with the criminal case file, if reclaimed) to be examined by the Judicial Chamber on Criminal Cases of the Russian Federation Supreme Court or the Military Chamber of the Russian Federation Supreme Court.

12. A person who files a petition seeking to re-examine an effective judicial decision with a supervisory-instance court may recall the supervisory review appeal or representation before the court commences examination thereof. If an application to withdraw an appeal or representation is submitted before the decision is made to institute supervisory review proceedings, the judge shall return the appeal or representation to the person who has filed it with the supervisory-instance court. If the application is submitted after the decision has been rendered to institute supervisory review proceedings and the appeal or representation has been transferred to be examined by a supervisory-instance court, that court shall render a ruling (or a finding) to terminate supervisory review proceedings due to the withdrawal of the appeal or representation.

A decision of the court to terminate supervisory review proceedings on the above ground shall not preclude the same person from re-filing an appeal or representation on the same legal grounds with the same supervisory-instance court.

13. In accordance with the requirements of paragraph five of Article 407 of the CCrimP of Russia, the procurator shall plead in the supervisory-instance court to maintain the supervisory review representation that she or he submits. At the same time, the procurator, as a party to the criminal proceedings, may, in the course of examination of any criminal case by way of the supervisory review procedure, may express her or his opinion about the well-foundedness of the supervisory review appeal. Therefore, like the other parties to the proceedings, the procurator must be notified of the date, time, and location of the supervisory-instance court hearing.

14. A ruling (finding) rendered by a supervisory-instance court shall comply with the requirements set forth in Article 388 of the CCrimP of Russia and contain findings as to the propriety or impropriety of the decisions rendered by the court of first instance, the court of second instance, or the lower supervisory-instance court within the scope in which the criminal case has been examined.

The precepts of the law of criminal procedure (paragraph four of Article 7, paragraph one of Article 388, and paragraph three of Article 408 of the CCrimP of Russia) do not provide a supervisory-instance court with a possibility to disregard or dismiss arbitrarily arguments contained in a supervisory review appeal or representation without referring to the factual or legal reasons in support of rejecting the claims stated therein.

A ruling (finding) rendered by a supervisory-instance court should not contain any findings as to the lawfulness, well-foundedness, or fairness of the judicial decision being re-examined as regards the portion thereof that has not been appealed against or reviewed under paragraphs one and two of Article 410 of the CCrimP of Russia.

15. In order to remedy violations of the law of criminal procedure that have been committed in the course of pre-trial proceedings and have led to a deprivation or restriction of statutorily guaranteed rights of parties to criminal proceedings, making it impossible to render a legal, valid, and fair judgment, unless that requires completion of an incomplete inquiry or pre-trial investigation, the supervisory-instance court, if requested by a party or on its own initiative, guided by subparagraph one of paragraph one of Article 237 of the CCrimP of Russia, shall be empowered to quash the judicial decisions rendered and remit the criminal case to the appropriate procurator.

16. Since re-examination of judicial decision by way of supervisory review procedure, where such re-examination would be to the detriment of a convicted person, acquitted person, or person against whom proceedings have been terminated, is allowed only pursuant to a complaint from the victim (or the victim's legal representative) and/or to a representation from the procurator, the court is empowered to render a finding (ruling) to the detriment of a convicted person, acquitted person, or person against whom proceedings have been terminated only on the legal ground stated in the complaint or representation, provided that such ground meets the criteria of a fundamental violation as formulated by the Russian Federation Constitutional Court's judgment no. 5-P, 11 May 2005, within the time-limit established by that judgment.

In such cases, the court may not render a decision to the detriment of convicted persons against whom no complaint or representation has been filed on such grounds.

17. If a judgment is quashed or the criminal case is remitted to the first-instance court for a *de novo* examination or if the criminal case is remitted to the procurator, the supervisory-instance court shall be obliged to take a decision on a measure of restraint to be imposed.

In imposing detention as a measure of restraint, the supervisory-instance court shall be guided by the general provisions of the law of criminal procedure, subject to the assumption that the parties concerned (provided that they are notified of the date, place, and time of the court hearing) are informed about the nature of the decisions rendered by the supervisory-instance court, including the possibility of detention being imposed as a measure of restraint.

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18. The power of the supervisory-instance court, envisaged by paragraphs one and two of Article 410 of the CCrimP of Russia, to review all the proceedings in a criminal case with regard to all the persons convicted obligates the court to remedy all the violations of substantive and procedural law that are identified during the court hearing, if such remedy entails an improvement of the position of the convicted person (convicted persons). Any different provision would contradict the provisions of Article 6 of the CCrimP of Russia.

However, in taking a decision to review proceedings in a criminal case under paragraph two of Article 410 of the CCrimP of Russia, courts should take it into account that such review entails a restriction of the convicted person's right to file a supervisory review appeal with the same supervisory instance and the right to convey her/his position on the case to the court.

19. In accordance with the requirements of the requirements of Article 392 and paragraph six of Article 410 of the CCrimP of Russia, the supervisory court's directions shall be binding in the course of the *de novo* examination of the criminal case by first-instance courts and second-instance courts, the lower supervisory-instance court, and shall be binding upon the procurator as well.

Findings of violations committed during the prior judicial proceedings or the pre-trial proceedings, as contained in the supervisory-instance court's ruling (finding) shall be as binding as any other judicial decision, so failure to comply with those findings by a lower court or the procurator shall be a ground for quashing the judicial decision subject to the conditions set forth in paragraph six of Article 381 of the CCrimP of Russia.

20. Where the examination of a criminal case with regard to some convicted persons (or persons acquitted or persons against whom criminal proceedings have been terminated) is within the jurisdiction of a

lower supervisory instance authority, while examination of the criminal case with regard to other such persons is within the jurisdiction of a higher supervisory instance authority, the criminal case is to be examined by the higher supervisory instance with regard to all the persons covered by the decision to institute supervisory review proceedings and with regard to the persons whose criminal case is reviewed under paragraph two of Article 410 of the CCrimP of Russia.

21. A supervisory review of a criminal case may involve the use of not only duly certified copies of procedural documents, but also other materials received along with the appeal or representation or submitted by the parties, if they corroborate the arguments set forth in the supervisory review appeal or representation and do not evidence the presence of new or newly discovered circumstances.

Additional materials are to be evaluated in conjunction with the available evidence in the case file and, along with that evidence, may be used as a basis only for a decision to quash a criminal court judgment, court finding, or ruling and to remit the criminal case to the procurator or to transfer the criminal case to a first-instance or second-instance court for a *de novo* examination.

A judgment or subsequent judicial decisions may not be altered or quashed, with proceedings in the criminal case terminated, on the basis of additional materials attached to an appeal or representation, except for instances when the facts set forth in such materials require no review by the first-instance court (such as documents evidencing that the convicted person is under the age of criminal liability, that the person in question has no prior convictions, that an amnesty act applies to a prior judgment, etc.).

22. A judicial decision may only be re-examined by way of supervisory review procedure on the legal grounds set forth in Articles 379 and 409 of the CCrimP of Russia. If doubts about the lawfulness, well-foundedness, or fairness of a judicial decision have to do with circumstances that were not known to the court and were discovered after the relevant criminal court judgment, court finding, or ruling took effect, the question about re-examination of such decision can only be resolved according to the procedure set forth in Chapter 49 of the CCrimP of Russia. If in the above instances a supervisory review appeal or representation has been filed and led to an erroneous decision to institute supervisory review proceedings and to transfer the petition to the supervisory-instance court to be examined, the court shall disregard it and terminate the supervisory review proceedings.

23. In the meaning of paragraph one of Article 412 of the CCrimP of Russia, a repeated supervisory review appeal or representation shall be an appeal or representation filed with regard to the same case and the same person with the same supervisory instance, by the same appellant, if a judicial decision (ruling, finding) with regard to that person was previously rendered by the same supervisory-instance court or the appeal or representation were dismissed by a judge's ruling that was upheld by the President of the Supreme Court of a Republic, the President of the Court of a Territory or Region, a Federal-Status City, an Autonomous Region, or an Autonomous Okrug, the President of the military court of a military district (or a fleet), or the President or a Deputy President of the Russian Federation Supreme Court. A repeated appeal or representation shall be returned by the judge of the appropriate supervisory-instance court without examination, with a reference to paragraph one of Article 412 of the CCrimP of Russia.

If it transpires from a repeated appeal or representation that there are grounds for quashing or altering a judicial decision, the persons referred to in paragraph four of Article 406 of the CCrimP of Russia, acting within their powers, may quash the judge's ruling, institute supervisory review proceedings, and transfer the appeal or representation to a supervisory-instance court for examination.

24. In accordance with paragraph four of Article 29 of the CCrimP of Russia, supervisory-instance courts may respond to errors and violations of law committed in the course of the inquiry, pre-trial investigation, or the trial, by issuing special findings (rulings).

25. In the light of the adoption of this Ruling, the Ruling by the Plenary Session of the Russian Federation Supreme Court On Application by Courts of Laws That Govern Re-Examination of Judgments, Findings, and Rulings in Criminal Cases by Way of Supervisory Review (Ruling no. 2 dated 5 April 1985) shall be made inoperative in the territory of the Russian Federation; the Ruling by the Plenary Session of the Russian Federation Supreme Court On Further Improvement of Russian Federation Courts' Activity On Examination of Appeals in Criminal Cases by Way of Supervisory Review and On Re-Examination of Effective Judgements, Findings, and Rulings (Ruling no. 6 dated 5 December 1978, as amended by Plenary Session's Ruling no. 10 dated 20 December 1983, Ruling no. 10 dated 24 December 1985, as amended by the Plenary Session's Ruling no. 11 dated 21 December 1993), and the Ruling by the Plenary Session of the Russian Federation Supreme Court On Implementation by Russian Federation Courts of Ruling no. 1 by the

Plenary Session of the Russian Federation Supreme Court On Examination of Criminal Cases and Appeals by Way of Supervisory Review, dated 25 April 1989 (as amended by the Plenary Session's Ruling no. 11 dated 21 December 1993), and paragraph 30 of the Ruling by the Plenary Session of the Russian Federation Supreme Court On Applications by Courts of Rules of the Russian Federation Code of Criminal Procedure (Ruling no. 1 dated 5 March 2004) shall be recognised invalidated.

V.M. LEBEDEV
President,
the Supreme Court of the Russian Federation,

V.V. DEMIDOV
Secretary of the Plenary Session,
Justice of the Supreme Court of the Russian Federation,

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