**JUDGMENT NO. 2-II**
**BY THE RUSSIAN FEDERATION CONSTITUTIONAL COURT,**
**5 February 2007,**

**in the Case to Review Constitutionality of the Provisions of Articles 16, 20, 112, 336, 376, 377, 380, 381, 382, 383, 387, 388, and 389 of the Russian Federation Code of Civil Procedure in Connection with a Query by the Cabinet of Ministers of the Republic of Tatarstan and Applications Submitted by the Nizhnekamskneftekhim and KhakasEnergo Public Joint-Stock Companies and Also by Several Individuals**

**In the name of the Russian Federation**

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

in the attendance of citizens M.-S.A. Abakarov, A.D. Ishchenko, A.A. Maslov, A.I. Maslov, S.V. Ponomaryova, O.S. Poludo, E.A. Sizikov, advocate E.A. Gataullin representing citizens S.P. Saveliev and R.P. Savelieva, advocate N.V. Zhikharev representing the KhakasEnergo public joint-stock company and citizen N.R. Gilmutdinov, advocates M.G. Raskin and A.R. Sultanov representing the Cabinet of Ministers of the Republic of Tatarstan and the Nizhnekamskneftekhim public joint-stock company, Ye.B. Mizulina, Permanent Representative of the State Duma before the Russian Federation Constitutional Court, Ye.V. Vinogradova, Doctor of Juridical Sciences, representing the Federation Council, and M.V. Krotov, Plenipotentiary Representative of the President of the Russian Federation before the Russian Federation Constitutional Court,

guided by Article 125 (paragraph two, subparagraph «a», and paragraph four) of the Russian Federation Constitution, Article 3, paragraph one, subparagraph one; sub-subparagraph «a», subparagraph three; Article 3, paragraph three and paragraph four, Articles 36, 74, 84, 85, 86, 96, 97, and 99 of the Federal Constitutional Law On the Russian Federation Constitutional Court,

has examined, in a public hearing, a case to review the constitutionality of the provisions of Articles 16, 20, 112, 336, 376, 377, 380, 381, 382, 383, 387, 388, and 389 of the Russian Federation Code of Civil Procedure.

The case was examined in response to a query submitted by the Cabinet of Ministers of the Republic of Tatarstan and to applications lodged by the Nizhnekamskneftekhim public joint-stock company and the KhakasEnergo public joint-stock company, and by citizens M.-S.A. Abakarov, A.V. Andriyanova, I.Zh. Gafiyatullin, N.R. Gilmutdinov, D.Ye. Zaugarov, A.D. Ishchenko, L.S. Kolodko, A.A. Maslov, A.I. Maslov, A.I. Maslova, Ye.Yu. Oleinikova, T.F. Polyakina, O.S. Poludo, S.V. Ponomaryova, S.P. Saveliev, R.P. Savelieva, E.A. Sizikov, F.F. Chertovsky, A.F. Shipina, and A.V. Shcherbinin. The ground for examining the case was the uncertainty identified as to whether the statutory provisions challenged by the applicants were consistent with the Russian Federation Constitution.

Since the query and the applications refer to the same subject matter, the Russian Federation Constitutional Court, guided by Article 48 of the Federal Constitutional Law On the Russian Federation Constitutional Court, joined the proceedings in those applications in a single proceeding.

Having heard the presentation by judge-rapporteur O.S. Khokhryakova, statements by the parties and their representatives, the opinion of expert Ye.A. Borisova, Doctor of Juridical Sciences, a presentation by a Deputy President of the

Russian Federation Supreme Court, V.M. Zhuikov, a representative of the Russian Federation Supreme Court who was invited to participate in the hearing, and after reviewing the documents and other materials presented, the Russian Federation Constitutional Court

**has found:**

1. In their applications to the Russian Federation Constitutional Court, the applicants in the present case challenge the constitutionality of several provisions of the Russian Federation Code of Civil Procedure, namely: Article 16, paragraph one, subparagraph three; Article 20, paragraph two, subparagraph one; Articles 112 and 336; Article 376, paragraph one; Article 377, paragraph two; Article 380, paragraphs two, three, and four; Article 381, paragraphs two, three, five, and six; Article 382, paragraph two; Article 382, paragraph three, subparagraph four; and Articles 383, 387, 388, and 389.

1.1. The Town Court of Sosnovy Bor of the Leningrad Region, by its judgment delivered on 4 March 2003, granted a claim by citizen A.D. Ishchenko, to recover health damage compensation arrears for the period between 7 December 2000 and 28 February 2003 from the Social Welfare Department of the Town of Sosnovy Bor Municipal Entity and to obligate the respondent to pay the above compensation to the plaintiff on a monthly basis starting on 1 March 2003, with the amount to be adjusted by way of procedure and within time-limits required by the law. The judgment of the first-instance court was modified with regard to the amount of the payments to be recovered, by a 19 November 2003 finding by the Judicial Chamber on Civil Cases of the Leningrad Region Court.

The Presidium of the Leningrad Regional Court, with which the Social Welfare Department of the Town of Sosnovy Bor Municipal Entity lodged an appeal requesting re-examination of the rendered judicial rulings by way of the supervisory review procedure, under Article 376 of the Russian Federation Code of Civil Procedure, quashed those rulings and denied A.D. Ishchenko's claims on 20 May 2005. On 1 September 2006, the Judicial Chamber on Civil Cases of the Russian Federation Supreme Court, having examined the case pursuant to an appeal for supervisory review from A.D. Ishchenko, quashed the ruling of the Presidium of the Leningrad Regional Court and upheld the first-instance court's judgment and the cassational-instance court's finding.

In his application to the Russian Federation Constitutional Court, A.D. Ishchenko requests to review the constitutionality of Article 376, paragraph one, under which effective court rulings, except for judicial rulings of the Presidium of the Russian Federation Supreme Court, can be appealed to a supervisory-instance court by persons who are parties to the proceedings or by other persons whose rights and legitimate interests are violated by the judicial rulings. The applicant maintains that the rule permits appeal, by way of the supervisory review procedure, by an official of the public authority, who is a party to the litigation, against a judicial ruling rendered in favour of a citizen, which has taken legal effect and subject to mandatory execution, for the purpose of having such ruling quashed, and therefore the rule is not consistent with Article 2, Article 15 (paragraph two), Article 17 (paragraph one), Article 18, Article 45 (paragraph one), and Article 46 (paragraph one) of the Russian Federation Constitution and contradicts Article 2 of the International Pact on Civil and Political Rights and Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights.

With a reference to Article 377, paragraph two, subparagraph three, of the Russian Federation Code of Civil Procedure, citizens A.V. Andriyanova, D.Ye.

Zauragov, L.S. Kolodko, A.A. Maslov, A.I. Maslov, A.I. Maslova, O.S. Poludo, T.F. Polyakina, F.F. Chertovsky, A.F. Shipina, and A.V. Shcherbinin had their supervisory review appeals against judgments rendered in civil cases to which they were parties and findings rendered by Justices of the Peace and appellate judgments and findings rendered by district courts, which were lodged by them with the Russian Federation Supreme Court, returned to them without being examined on merits, with the statement that such applications were outside the jurisdiction of the Russian Federation Supreme Court.

According to the applicants, Article 377, paragraph two, subparagraph three, of the Russian Federation Code of Civil Procedure, which stipulates that supervisory review appeals (representations) against rulings rendered by the Presidium of the Supreme Court of a Republic, the Presidium of a Territorial or Regional Court, or the Presidium of an equal-status court shall be submitted to the Judicial Chamber on Civil Cases of the Russian Federation Supreme Court, thereby excluding the possibility of lodging with that supervisory instance appeals against judgments and findings rendered by Justices of the Peace and against appellate judgments and rulings rendered by district courts if the judge of the Supreme Court of a Republic, a Territorial or Regional court, or an equal-status court rules not to reclaim the case or not to transfer the case reclaimed to a supervisory-instance court to be examined on its merits and if the President of that court confirms the validity of such denial, violates the equality of citizens in exercising their right to judicial protection, impairs their right to free access to justice, and hinders correction of judicial errors committed, and therefore is inconsistent with Article 2, Article 19 (paragraph one and paragraph two), Article 45 (paragraph one), Article 46 (paragraph one), Article 55 (paragraph two and paragraph three), and Article 126 of the Russian Federation Constitution.

Citizens M.-S.A. Abakarov and S.V. Ponomaryova repeatedly lodged applications for re-examination of judicial rulings in their cases, by way of the supervisory review procedure, with supervisory-instance courts, but their petitions to have their cases transferred to a supervisory-instance court to be examined on their merits were denied.

As stated by the applicants, Article 381, paragraph two, paragraph three, and paragraph six, Article 382, paragraph two, and Article 383 of the Russian Federation Code of Civil Procedure, which govern the procedure for examination of supervisory review appeals and cases reclaimed by supervisory-instance courts, hinder the exercise of citizens' right to access to supervisory-instance courts and violate judicial protection guarantees implied by Article 15, Article 17, Article 18, Article 45, Article 46, paragraph one, Article 47, paragraph one, Article 55, paragraph two and paragraph three, Article 118, Article 120, and Article 123, paragraph three of the Russian Federation Constitution and Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as they empower the judge to render decisions not to reclaim the case or, if the case is reclaimed, not to transfer it to a supervisory-instance court to be examined on its merits without holding a court hearing or conducting a full review of the case records, in a single-judge procedure, instead of by a multi-member court, with the parties not summoned or not attending; as a result, since the citizens are deprived of the right to assert their rights and legitimate interests based on the principles of adversarial proceedings and the parties' equality of arms, an essentially final decision is taken in support of the lawfulness of the judicial rulings that are the subject matter of the appeals.

The applicants also maintain that Article 381, paragraph six, and Article 383, paragraph two, of the Russian Federation Code of Civil Procedure are unconstitutional because the rules contained therein permit non-procedural actions to be performed by the President of the Supreme Court of a Republic, the President of a Territorial or

Regional Court, or the President of an equal-status court, and the President and a Deputy President of the Russian Federation Supreme Court in exercising her or his right to consent to or not to consent to the judge's ruling on a supervisory review appeal not to reclaim the case or not to transfer the case to a supervisory-instance court to be examined on its merits.

Besides, S.V. Ponomaryova, as well as citizens Ye.Yu. Oleinikova and E.A. Sizikov request review of the constitutionality of Article 387 of the Russian Federation Code of Civil Procedure, which stipulates that substantial violations of the provisions of substantive or procedural law shall be grounds for quashing or altering judicial rulings by way of the supervisory review procedure. The applicants hold that, due to the uncertainty of the term «substantial violations», Article 387 allows for a variety of interpretations thereof in law-application practices and, as a result, provides for the judge's (the court President's) unbridled discretion in deciding whether to reclaim the case or to transfer it to a supervisory-instance court to be examined on its merits, which causes a violation of citizens' right to fair justice and judicial protection of their rights and freedoms and contradicts Article 46, paragraph one, and Article 55, paragraph two and paragraph three, of the Russian Federation Constitution.

The constitutionality of Article 389 of the Russian Federation Code of Civil Procedure, which stipulates that the President or a Deputy President of the Russian Federation Supreme Court may submit to the Presidium of the Russian Federation Supreme Court a well-reasoned representation for re-examination of judicial rulings, by way of the supervisory review procedure, for the purpose of ensuring uniformity of judicial practices and lawfulness, is challenged in the query submitted to the Russian Federation Constitutional Court by the Cabinet of Ministers of the Republic of Tatarstan in accordance with Article 125 (paragraph two, subparagraph «a») of the Russian Federation Constitution and Article 84 of the Federal Constitutional Law On the Russian Federation Constitutional Court, and in the applications submitted by the KhakasEnergo public joint-stock company and the Nizhnekamskneftekhim public joint-stock company and by citizens I.Zh. Gafiyatullin, N.R. Gilmutdinov, S.P. Saveliev, and R.P. Savelieva.

As it transpires from the submitted materials, in November 2005, the Presidium of the Russian Federation Supreme Court, acting pursuant to a representation submitted by a Deputy President of the Russian Federation Supreme Court, quashed the judgment of the Sayanogorsk Town Court of 21 August 2002, which had established that the KhakasEnergo public joint-stock company had ownership of several power facilities; the case has not been examined by a cassational-instance court, and no supervision review appeals against the judgment of the first-instance court which provided a basis for the registration of ownership of the above property assets have been lodged with the Russian Federation Supreme Court. Also, under Article 389 of the Russian Federation Code of Civil Procedure, a Deputy President of the Russian Federation Supreme Court submitted representations to the Presidium of the Russian Federation Supreme Court seeking re-examination of effective judicial rulings, by way of the supervisory review procedure, rendered in civil cases involving the Nizhnekamskneftekhim public joint-stock company and citizens I.Zh. Gafiyatullin, N.R. Gilmutdinov, S.P. Saveliev, and R.P. Savelieva.

The applicants hold that Article 389 of the Russian Federation Code of Civil Procedure is not consistent with universally recognised principles and international law rules on fair justice and with the Russian Federation's international-law obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms, or with Article 2, Article 4 (paragraph two), Article 10, Article 15 (paragraph two), Article 18, Article 19 (paragraph two), Article 21, Article 46 (paragraph one), Article 47 (paragraph one), Article 55 (paragraph two and paragraph three), Article 94, Article

118, Article 120 (paragraph one), and Article 126 of the Russian Federation Constitution, as it provides the officials referred to therein with a right, unlimited by procedural time-limit, to lodge representations with the Presidium of the Russian Federation Supreme Court seeking re-examination of effective judicial rulings by way of the supervisory review procedure, – whether or not a supervisory review appeal (representation) has been lodged by the person interested in such re-examination, in the absence of statutorily-established procedure and without observance of the general judicial hierarchy procedure for lodging supervisory review applications, while the ground for lodging a representation, as stipulated by that Article, does not pass the general legal criterion of a clear and unequivocal legal rule. The fact that the power to lodge a representation with the Presidium of the Russian Federation Supreme Court is vested in persons who hold the top official positions in the system of courts of general jurisdiction – the President and Deputy Presidents of the Russian Federation Supreme Court, who are also members of the Presidium of the Russian Federation Supreme Court, – contradicts, according to the applicants, the principles of impartial, independent, and fair justice.

1.2. The Presidium of the Penza Region Court, after rejecting the challenge to the entire court panel lodged by citizen E.A. Sizikov, on 22 April 2005 ruled to quash the appellate judgment rendered by the Zheleznodorozhny District Court of the City of Penza, which granted E.A. Sizikov's claim to recover monthly interest payments under a loan agreement from citizens M.B. Burmistrova and Yu.V. Zhukova, and returned the case to the appellate-instance court for a *de novo* examination. The supervisory review appeal against that ruling submitted by E.A. Sizikov to the Russian Federation Supreme Court was returned to him and not examined on merits on the ground, with a reference to Article 377, paragraph two, subparagraphs 1 and 3б of the Russian Federation Code of Civil Procedure, that it was outside the jurisdiction of the Russian Federation Supreme Court. On 12 August 2005, the Zheleznodorozhny District Court of the City of Penza denied E.A. Sizikov's appeal against the finding rendered by the Justice of the Peace of Judicial Precinct No. 2 which extended the deadline for lodging the appeal missed by M.B. Burmistrova and Yu.V. Zhukova, the civil defendants in his lawsuit.

As he, along with other individual applicants in the present case, challenges the constitutionality of Article 377, paragraph two, subparagraph three, of the Russian Federation Code of Civil Procedure, the applicant holds that the rule contained therein deprived him of the right to lodge an appeal with the Judicial Chamber on Civil Cases of the Russian Federation Supreme Court against a ruling rendered by the Presidium of a Regional Court in a case within the jurisdiction of a Justice of the Peace. However, that rule does not establish any exceptions with regard to lodging appeals against such rulings. Reviewing the lawfulness of the ruling rendered by a justice of the Russian Federation Supreme Court, who returned E.A. Sizikov's supervisory review appeal against the ruling rendered by the Presidium of the Penza Regional Court without examining it on its merits, is not within the competence of the Russian Federation Constitutional Court, as defined in Article 125 of the Russian Federation Constitution and in Article 3 of the Federal Constitutional Law On the Russian Federation Constitutional Court.

Besides, the applicant holds that his constitutional rights are being violated by Article 16, paragraph one, subparagraph three, and by Article 20, paragraph two, paragraph one, of the Russian Federation Code of Civil Procedure, for the procedure thereby established for deciding upon a party's petition challenging judges (which challenged members of the Presidium of the Penza Regional Court in this case), namely, the procedure under which the same court panel takes a decision as to the existence of circumstances that cause doubts about the judges' fairness and impartiality makes it possible to deny a challenge of the court panel without proffering the reasons. However,

as it was repeatedly indicated by the Russian Federation Constitutional Court, the institution of challenge to judges introduced by the legislature, is aimed at implementing the provisions of the Russian Federation Constitution (Article 46, paragraph one; Article 120, paragraph one; and Article 123, paragraph three) and of the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6), which stipulate the right to judicial protection by an independent and impartial tribunal established by law, which is also guaranteed by the totality of civil-procedure remedies and procedures. In particular, fairness and impartiality in resolving a case shall be supervised by higher courts, which, if they identify grounds for quashing rulings rendered by lower courts, shall proceed from the constitutional and universally recognised international-law principles of justice and – by virtue of Article 15, paragraph one and paragraph four, of the Russian Federation Constitution and Article 11 of the Russian Federation Code of Civil Procedure – shall apply them directly.

E.A. Sizikov also holds that Article 112 of the Russian Federation Code of Civil Procedure is unconstitutional in that it allows arbitrary extension of the missed deadline for appealing against a Justice of the Peace judgment. However, that Article is also intended to expand guarantees of the judicial protection of the rights and legitimate interests of parties to civil proceedings. The fact that the Article does not list grounds for extending missed deadlines for interested parties to lodge supervisory review appeals does not mean, contrary to the applicant's allegation, that the court has unlimited discretionary powers, because the court, by finding certain reasons valid, resolves the matter – within the discretion granted to it by the law – with due regard for all the circumstances of a specific case.

Besides, neither Article 112 of the Russian Federation Code of Civil Procedure, nor Article 16, paragraph one, subparagraph three, nor Article 20, paragraph two, subparagraph one, of the Code may be applied without regard for Article 225, paragraph one, subparagraph five, of the Code, which stipulates, as a general requirement to the content of a court finding, that it must state the reasons for the conclusions made by the court. These legal provisions, taken in a systemic interrelationship, do not permit the court, in dealing with challenges to judges or extending missed procedural time-limits, to disregard or deny arbitrarily any arguments, submissions, or petitions, without providing reasons of fact or of law for denying them, or consequently, to render relevant findings without a complete consideration and evaluation of the arguments presented, without providing specific reasons why certain arguments are rejected or taken into account and without giving references to the relevant rules of substantive and procedural law.

As for the applicant's allegation that the impartial tribunal principle was violated by what he sees as unreasoned denial of his challenge of the bench and by the unjustified extension of the time-limit missed by the defendant for appealing against a Justice of the Peace judgment, that matter, as one to be resolved through establishment and examination of the facts of the case, lies within the jurisdiction of courts of general jurisdiction and may not be examined by way of constitutional judicial proceedings.

Citizen T.F. Polyakina, who is also challenging the constitutionality of Article 377, paragraph two, subparagraph three, of the Russian Federation Code of Civil Procedure, alleges, in addition, that Article 336, which makes it impossible to appeal against Justice of the Peace judgments with a cassational-instance court, violates her right to judicial protection. However, according to the legal position of the Russian Federation Constitutional Court, the statutory regulation of re-examination of Justice of the Peace judgments not yet in effect, under which such judgments shall be re-examined by district courts by way of the appellate review procedure, with district courts viewed by the legislature as the second-instance courts (as well as courts re-examining, by way of the cassational review procedure, judgments rendered by other first-instance courts),

does not violate citizens' constitutional rights (finding No. 111-O, 15 May 2002; finding No. 359-O, 20 October 2005, *et al.*).

Citizen R.P. Savelieva, in addition to challenging Article 389 of the Russian Federation Code of Civil Procedure, is also challenging paragraphs two, three, and four of Article 380 of that Code, which she believes are interrelated with Article 389, which define instances in which it is possible for the judge to return a supervisory review appeal (representation) without examining it on its merits. However, those provisions were not applied in the applicant's case, because no supervisory review appeals or procurator's representations against court rulings rendered in this case were submitted to the Presidium of the Russian Federation Supreme Court. As for Article 382, paragraph three, subparagraph four, of the Russian Federation Code of Civil Procedure, also challenged by the applicant, that provision in itself, which stipulates that a case transferred to the Presidium of the Russian Federation Supreme Court shall be examined by that supervisory instance within four months, cannot be seen as violating any constitutional rights or freedoms of citizens.

Citizen M.-S.A. Abakarov requests reviewing the constitutionality of Article 381, paragraph five, of the Russian Federation Code of Civil Procedure, which stipulates that, when a decision is taken not to reclaim a case, the appeal and copies of the court rulings against which the appeal is lodged shall be kept by the supervisory-instance court, on the ground that the refusal to return copies of court rulings makes it considerably more difficult or sometimes impossible, he maintains, to exercise the right of access to the supervisory-instance court. This proposition cannot be found justified, because the parties and their representatives in any event have the right to re-obtain copies of court judgments rendered in their case, subject to payment of a standard state duty (Article 33319 of the Russian Federation Tax Code).

Citizen Ye.Yu Oleinikova, in addition to challenging Article 387 of the Russian Federation Code of Civil Procedure, is also challenging the constitutionality of Article 388 of that Code, which sets the requirements concerning the content of a ruling or finding to be rendered by a supervisory-instance court. However, the applicant's case has not been transferred to a supervisory-instance court to be examined on its merits, and no documents have been submitted to confirm that the Article had been applied or is to be applied in her case.

1.3. In accordance with Articles 74, 96, and 97 of the Federal Constitutional Law On the Russian Federation Constitutional Court, the Russian Federation Constitutional Court shall only deliver judgments on the subject matter indicated in an application and only with regard to the portion of an act whose constitutionality is challenged by the applicant, and shall, pursuant to citizens' appeals against violations of constitutional rights and freedoms, review the constitutionality of the law or provisions thereof that are the subject matter of an application, only as regards the portion thereof that was actually applied in the applicant's case and affects the applicant's rights and freedoms.

Since the applications of the applicants questioning Article 16, paragraph one, subparagraph three, Article 20, paragraph two, subparagraph one, Articles 112 and 336, Article 380, paragraphs two, three and four, Article 381, paragraph five, Article 382, paragraph three, subparagraph four, and Article 388 of the Russian Federation Code of Civil Procedure, as regards reviewing the constitutionality of those provisions, cannot be found admissible, constitutional review proceedings with regard to those provisions is to be discontinued in accordance with Article 43, paragraph one, subparagraph two, and Article 68 of the Federal Constitutional Law On the Russian Federation Constitutional Court.

Therefore, the subject matter to be examined by the Russian Federation Constitutional Court in the present case comprises the following interrelated rule-

establishing provisions of the Russian Federation Code of Civil Procedure governing re-examination of effective court rulings by way of the supervisory review procedure:

Article 376, paragraph one, which stipulates that it is possible to lodge appeals with a supervisory-instance court against effective court rulings, except for judicial rulings rendered by the Presidium of the Russian Federation Supreme Court, for persons who are parties to the proceedings and for other persons whose rights and legitimate interests are violated by the court rulings;

Article 377, paragraph two, subparagraph three, as regards the impossibility of lodging supervisory review appeals with the Judicial Chamber on Civil Cases of the Russian Federation Supreme Court against judicial writs, judgments, and findings rendered by Justices of the Peace and against appellate judgments and findings rendered by district courts if a judge of the Supreme Court of a Republic, a Territorial or Regional Court, or an equal-status court renders a ruling not to reclaim the case in connection with a supervisory review appeal (representation) against such court rulings or a finding not to transfer the case to a supervisory-instance court to be examined on its merits, and the lawfulness of such denial is confirmed by the President of that court;

Article 381, paragraph two and paragraph three, and Article 382, paragraph two, which govern the procedures for examination by judges of supervisory review appeals (representations) and of cases reclaimed by supervisory-instance courts and empower judges to rule, based on examination of a supervisory review appeal (representation), to reclaim the case from a lower court, if there are doubts as to the lawfulness of the judicial ruling, or not to reclaim the case, if the arguments set forth in the appeal or representation cannot result in the judicial ruling to be modified, under the federal law, or to rule, based on examination of a case reclaimed by a supervisory-instance court, to transfer or not to transfer the case to a supervisory-instance court to be examined on its merits;

Article 381, paragraph six, and Article 383, paragraph two, which empower the President of the Supreme Court of a Republic, the President of a Territorial or Regional court, or the President of an equal-status court, the President and a Deputy President of the Russian Federation Supreme Court to disagree with a judge's ruling not to reclaim a case or not to transfer a case to a supervisory-instance court to be examined on its merits and to render a ruling to reclaim a case or to transfer a case to a supervisory-instance court to be examined on its merits;

Article 387, which stipulates the grounds for quashing or altering lower courts' rulings by way of the supervisory review procedure;

Article 389, which empowers the President and a Deputy President of the Russian Federation Supreme Court to submit well-reasoned representations for re-examination of court rulings, by way of the supervisory review procedure, for the purpose of securing uniformity of judicial practices and legality.

2. According to the Russian Federation Constitution, the right to judicial protection and to access to justice is one of the fundamental inalienable human rights and freedoms and is also a guarantee of all the other rights and freedoms; it is recognised and guaranteed in accordance with the universally recognised principles and rules of the international law (Articles 17 and 18; Article 46, paragraph one and paragraph two; Article 52).

It transpires from the above-listed constitutional provisions read in conjunction with Article 14 of the International Pact on Civil and Political Rights and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, that justice as such should provide for effective reinstatement of the rights and meet the requirements of fairness.

2.1. By virtue of Article 15 (paragraph four) of the Russian Federation Constitution, the universally recognised international-law principles and rules and the

international treaties acceded to by the Russian Federation are a component part of the country's legal system; besides, an international treaty acceded to by the Russian Federation shall prevail over a domestic statute in the event of a conflict between them.

By ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms, the Russian Federation recognised the binding jurisdiction of the European Court of Human Rights as regards construction and application of the Convention and Protocols thereto in case of potential violations thereof by the Russian Federation (Federal Law No. 54-FZ, 30 March 1998). Thus, like the Convention for the Protection of Human Rights and Fundamental Freedoms, judgments of the European Court of Human Rights, inasmuch as they provide construction of the rights and freedoms enshrined in the Convention, based on the universally recognised international-law principles and rules, including the right to access to court and fair justice, are part of Russia's legal system and therefore should be considered by the federal legislature in regulating social relationships and by law-application authorities in applying relevant rules of law.

2.2. In unfolding the constitutional content of the right to judicial protection, the Russian Federation Constitutional Court has expressed the following legal positions: the lack of an opportunity to re-examine an erroneous judicial decision is not consistent with the requirement of an effective reinstatement of rights through justice, a universal requirement in judicial proceedings, in line with the requirements of fairness, and it impairs and restricts that right; in exercising judicial protection of rights and freedoms, it is possible to lodge appeals with courts against decisions and actions (omissions) of any State authorities, including judicial authorities (judgment No. 4-P, 2 February 1996, On Reviewing the Constitutionality of Articles 371, 374, and 384 of the Code of Criminal Procedure of the Russian Soviet Federated Socialist Republic; judgment No. 5-P, 3 February 1998, On Reviewing the Constitutionality of Articles 180, 181, 187, 192 of the Russian Federation Code of Arbitrage Procedure, *et al*.).

As it guarantees every person's right to judicial protection of her or his rights and freedoms and to judicial appeal against decisions of State authorities, including judicial authorities, the Russian Federation Constitution does not directly stipulate the procedure for judicial review of court judgments upon interested persons' appeals: that procedure is defined by a Federal law based on the Russian Federation Constitution. The federal legislature, whose limits of discretion are quite broad in establishing the system of judicial instances, the appeal sequence and procedure, the grounds for quashing or alteration of court rulings by higher courts, and the powers of higher courts, should in any event provide relevant regulation with due regard for the constitutional goals and values, the universally recognised principles and norms of the international law, and the international obligations assumed by the Russian Federation and provide procedural safeguards to persons who are parties to proceedings.

3. In order to create a mechanism for effective reinstatement of violated rights, the federal legislature provided for procedures to re-examine court rulings the Russian Federation Code of Civil Procedure: proceedings in second-instance courts – appellate or cassational, – to examine cases involving appeals (representations) against court rulings not yet in effect, and re-examination of effective court rulings by way of the supervisory review procedure or in view of newly discovered circumstances.

In the Russian Federation's legal system, the institution of re-examination of court rulings in civil cases by way of the supervisory review procedure (Chapter 41 of the Russian Federation Code of Civil Procedure) is based upon provisions of the Russian Federation Constitution, namely: Article 46, which, in conjunction with Article 15 (paragraph four) and Article 17 (paragraph one and paragraph three), provides for the possibility, common to any rule-of-law state, of re-examining effective court judgments, if fundamental errors have been committed, and Article 126, under which the Russian

Federation Supreme Court, as the highest tribunal for civil, criminal, administrative, and other cases within the jurisdiction of courts of general jurisdiction, conducts judicial supervision of courts' work in procedural forms defined by Federal legislation and provides clarifications on the matters of judicial practices.

The above-mentioned constitutional provisions are detailed in the Federal Constitutional Law On the Judicial System of the Russian Federation, which stipulates the powers of the Russian Federation Supreme Court and of other federal courts of general jurisdiction in examining civil cases by way of the supervisory review procedure; the Russian Federation Code of Civil Procedure stipulates the right of the parties to proceedings and of other persons whose rights and legitimate interests have been violated by court rulings to lodge appeals against such court rulings (except for the judicial rulings rendered by the Presidium of the Russian Federation Supreme Court) with a supervisory-instance court within one year from the effective date thereof (Article 376).

3.1. In identifying the constitutional-law nature of proceedings before the supervisory-instance courts as a legal institution intended by the federal legislature to correct judicial errors in effective court judgments, the Russian Federation Constitutional Court has formulated legal positions that are set forth here below, in a number of decisions, including judgment No. 5-P, 11 May 2005, On Reviewing the Constitutionality of Article 405 of the Russian Federation Code of Criminal Procedure and judgment No. 11-P, 17 November 2005, On Reviewing the Constitutionality of Article 292, paragraph three of the Russian Federation Code of Arbitrage Procedure.

Re-examination of effective court judgments by way of the supervisory review procedure is only available as an extra guarantee of the lawfulness of such acts and involves the establishment of special grounds and procedures to be applied in proceedings at that particular stage of the judicial process that should be in line with its legal nature and purpose. An court decision, which has already taken legal effect, can be modified or quashed in exceptional cases only, when an error, which was committed in previous proceedings and predetermined the outcome of the proceedings, has led to a significant violation of rights and legitimate interests that are subject to judicial protection and which cannot be reinstated without quashing or altering the erroneous judicial decision.

It follows from the Russian Federation Constitution that the grounds for, the terms and procedures of, and time-limits for re-examining effective court judgments have to be stipulated by law: the absence of such stipulation, just like the existence of excessive or undefined time-limits, vague or unclear grounds for re-examination of court judgments, would lead to unstable legal relationships, arbitrary changes of the parties' legal status established by court judgments and would create uncertainty both in disputed substantive legal relationship and in procedural legal relationships arising in connection with the judicial dispute. By setting time-limits for procedural actions and thereby applying certainty to procedural legal relationships, the federal legislature should ensure, at the same time, that the rights of the persons involved in proceedings are duly exercised, on the basis of a balance between the right to a fair trial, with the possibility of remedying substantial violations that have influenced the outcome of the proceedings through the supervisory review proceedings, on the one hand, and the principle of legal certainty, on the other hand.

3.2. The right to judicial protection, guaranteed by the Russian Federation Constitution, envisages the creation by the State of conditions required for effective and fair trial particularly before the first-instance court, which should resolve all the issues relevant to the determination of the parties' rights and obligations. Errors committed by a first-instance court must be corrected by a second-instance court using procedures that are as similar as possible to proceedings before the first-instance courts. Also, as seen

from the legal position formulated by the Russian Federation Constitutional Court in judgment No. 11-P, 17 November 2005, the right to a fair trial before an independent and impartial tribunal within a reasonable time also envisages that effective court judgments and execution thereof shall be final and irreversible; that explains the transfer of the main burden of re-examination of judgments delivered by the first-instance courts to ordinary judicial instances – appellate and cassational-instance courts.

The availability of proceedings to re-examine effective judicial rulings as an extra method of ensuring the lawfulness of judicial rulings means that the method can only be used if the interested party has exhausted all the ordinary methods of lodging appeals against the judicial ruling before it becomes effective. The interested person's failure to use those methods should be, according to the European Court of Human Rights, an obstacle that prevents the lodging of a supervisory review appeal against the judicial decision (*Nelyubin v. Russia*, 2 November 2006, §§ 28 – 30).

Since reviewing effective court judgments means, in effect, that the final nature of those court judgments can be overcome, the legislature should establish institutional and procedural terms and conditions of re-examination of the decisions, by way of the supervisory review procedure, that would meet the requirements of procedural effectiveness, efficient use of judicial remedies, and transparency of administration of justice, and rule out the possibility of delaying judicial proceedings or having proceedings resumed without adequate justification, and thereby would ensure the fairness of the court judgment and at the same time legal certainty, including the recognition of the legal effect of court judgments and the irrefutability thereof (*res judicata*), without which no balance between public-law and private-law interests can be struck.

4. Article 387 of the Russian Federation Code of Civil Procedure stipulates that substantial violations of the provisions of substantive or procedural law shall be grounds for quashing or altering judicial rulings rendered by lower courts, by way of the supervisory review procedure. The use, by the federal legislature, of such an evaluative characteristic as substantial nature of a violation in this case is due to the fact that the diversity of circumstances to confirm the existence of relevant grounds makes it impossible to list them all in the law and cannot be considered as impermissible in itself: granting certain discretion to the supervisory-instance court in deciding whether grounds exist for quashing or altering judicial rulings by way of the supervisory review procedure, – subject to uniform construction and application of that rule, – does not contradict the principle of access to justice and corresponds to the role, function, and powers of a court as an independent justice authority.

In accordance with the established judicial practices, the substantial nature of violations of procedural law rules are established by a supervisory-instance court under Article 364 of the Russian Federation Code of Civil Procedure; violations of substantive law rules are established by a supervisory-instance court under Article 363 of the Russian Federation Code of Civil Procedure, and the substantial nature of substantive law violations is evaluated and recognised with due regard for specific circumstances of the case and the significance of the consequences of such violations for the person against whom such rules have been violated (subparagraphs 24 and 25 of the Resolution of the Plenary Session of the Russian Federation Supreme Court On Certain Issues that Have Emerged Following the Adoption and Enactment of the Russian Federation Code of Civil Procedure No. 2, 20 January 2003).

In the meaning of Article 387 of the Russian Federation Code of Civil Procedure read in conjunction with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, and with due regard for legal positions of the Russian Federation Constitutional Court, not any of the substantive and procedural law violations referred to in Articles 363 and 364 of the Russian Federation Code of Civil

Procedure can be recognised as a substantive violation to serve as a ground for quashing or altering judicial rulings by way of the supervisory review procedure. The substantial nature of a violation to serve as a ground for supervisory quashing or alteration of a judicial ruling should be evaluated with due regard for the nature, intent, and objectives of the supervisory review proceedings specifically.

Grounds for quashing or altering effective judicial rulings must correspond to constitutionally meaningful objectives and, consistent with the principle of proportionality, should not affect the balance between the fairness of a court judgment and the irreversibility thereof. Since re-examination of judicial rulings by way of the supervisory review procedure is an extra guarantee of the exercise of the constitutional right to judicial protection and of the true nature of court judgments, which operates after all the remedies available in the first-instance courts and second-instance courts have been exhausted, grounds for such re-examination should not make it possible to institute supervisory review proceedings for the sole purpose of correcting judicial errors that should be rectified through ordinary judicial procedures of review of judicial rulings that did not take legal effect yet.

Quashing or alteration of a judicial ruling by way of the supervisory review procedure is only permissible if a judicial error that was committed in previous proceedings and has influenced the outcome of the proceedings has led to a substantive violation of human and civil rights and freedoms, the rights and legitimate interests of an unlimited number of people, or other public interests protected by law. A judicial ruling rendered by a lower court may not be quashed or modified on the sole ground that the supervisory-instance court has a different view of how the case should have been determined. As repeatedly pointed out by the European Court of Human Rights in its judgments concerning the supervisory review proceedings in civil cases in the Russian Federation, the principle of *res judicata* insists that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case; the mere possibility of there being two views on the subject is not a ground for re-examination (*Ryabykh v. Russia*, 24 July 2003, § 52). Any different approach would lead to a disproportionate limitation of the principle of legal certainty.

5. Chapter 41 of the Russian Federation Code of Civil Procedure, which regulates proceedings before the supervisory-instance court, provides for (in Articles 381 – 383) preliminary examination of the supervisory review appeals (representations) by the judge. It is at this stage of the supervisory review proceedings, which is a procedure for admitting (screening) supervisory review appeals (representations), that the decision is made whether to transfer the case to a supervisory-instance court to be examined on its merits.

The introduction of this preliminary procedure, exempt from certain procedural rules that are mandatory for other judicial procedures – the requirements to notify and summon the parties, to hold a court hearing, etc., – serves the purposes of balancing public and private interests, preventing the transformation of a supervisory-instance court into an ordinary judicial instance, and excluding manifestly ill-founded applications, – in line with the case-law of the European Court of Human Rights, which recognises that the right of access to a court can be restricted, in particular, by determining of an application's admissibility, provided, however, that the right shall not be restricted in such a manner and to such extent that will affect the very essence of that right; permissible restrictions of that right should have a legitimate aim, and there should be a reasonable proportionality between the means employed and the set aim.

The introduction, in itself, of a preliminary procedure of examination of supervisory review appeals (representations), which establishes the existence of legal grounds for further proceedings in the case (whether the case should be reclaimed

and/or transferred to a supervisory-instance court to be examined on its merits) based on the arguments set forth in the appeal (representation) and on the content of the judicial rulings (the materials of the case reclaimed) that are the subject matter of the appeal, is consistent with the legal nature and the mission of the supervisory review proceedings and cannot be viewed as incompatible with every person's right to judicial protection and to a fair hearing before a tribunal, and, when a case is examined on its merits by a supervisory-instance court, the fundamental procedural principles and guarantees shall be honoured with regard to the parties and to other persons participating in the proceedings. Moreover, in the meaning of Articles 381 – 383 of the Russian Federation Code of Civil Procedure, a well-reasoned finding must be rendered in any event – in deciding whether grounds exist for reclaiming the case, as well as in deciding whether grounds exist for transferring the case to a supervisory-instance court to be examined on its merits.

Fixing in the law of any different preliminary procedure for examination of supervisory review appeals (representations) – such as a court hearing attended by persons participating in the proceedings, with a hearing of their pleas and counter-pleas, – would lead to a considerably longer time required to handle applications at this stage of reviewing them, intended solely to exclude manifestly ill-founded applications from the scope of examination by supervisory-instance courts. At the same time, in view of the constitutional requirement that everyone should have equal rights to judicial protection and with due regard for the right of persons who have not lodged supervisory review appeals (representations) to legitimately assume that an effective judicial ruling is operative, such persons must be notified that an appeal has been lodged against the judicial ruling and that the case has been transferred to a supervisory-instance court to be examined on its merits (Article 385, paragraph one, of the Russian Federation Code of Civil Procedure).

Article 381, paragraph two and paragraph three, and Article 382, paragraph two of the Russian Federation Code of Civil Procedure, which provide for a preliminary examination of a supervisory review appeal (representation) by a judge in a single-judge procedure, read in conjunction with Article 376, paragraph one, Article 378, paragraph two, Article 379, and Article 387 of that Code, do not make it possible for the judge to make arbitrary decisions, – the judge is required to analyse the judicial rulings being appealed against and the arguments set forth in the appeal (representation) about violations of the law committed and in any event to reclaim the case if reviewing the materials presented makes the judge doubt the lawfulness of the decision rendered and to transfer the case to a supervisory-instance court to be examined on its merits if reviewing the case reclaimed leads the judge to believe that there are statutory grounds for quashing or altering the judicial decision appealed by way of the supervisory review procedure.

Single-judge examination of a supervisory review appeal (representation) and/or a case reclaimed does not contradict the constitutional principles of justice, does not restrict or violate the constitutional right to judicial protection, all the more so since, as repeatedly pointed out by the Russian Federation Constitutional Court, no new decision, with a new determination of the parties' rights and obligations, is rendered at the stage of the preliminary examination of supervisory review appeals (representations) by the judge.

At the same time, the federal legislature's right is not excluded to introduce a multiple-member court procedure for deciding whether there are grounds for transferring the case to a supervisory-instance court to be examined on its merits, as provided in the Russian Federation Code of Arbitrage Procedure (Article 299, paragraph one).

6. In accordance with Article 381, paragraph six, and Article 383, paragraph two, of the Russian Federation Code of Civil Procedure, the President of the Supreme Court of a Republic, the President of a Territorial or Regional Court, or the President of an equal-status court, the President or a Deputy President of the Russian Federation Supreme Court may disagree with a judge's finding not to reclaim a case or not to transfer a case to a supervisory-instance court to be examined on its merits and render a ruling of their own to reclaim the case or to transfer the case to a supervisory-instance court to be examined on its merits.

In the meaning of the above statutory provisions read in conjunction with other provisions of Chapter 41 of the Russian Federation Code of Civil Procedure, the above power may only be exercised if there is a supervisory review appeal (representation) lodged by an appellant. Such application can be viewed as an appeal against a finding rendered by a judge, and is essentially a separate stage of the supervisory review proceedings, so such application can only be admissible within the time-limit stipulated by Article 376, paragraph two, of the Russian Federation Code of Civil Procedure. The President of the Supreme Court of a Republic, the President of a Territorial or Regional Court, or the President of an equal-status court, the President or a Deputy President of the Russian Federation Supreme Court, when they receive an application from an interested party, render decisions according to the same procedure, within the same time-limits, and based on the same grounds as stipulated by the Russian Federation Code of Civil Procedure for the judge examining a supervisory review appeal (representation) to decide whether to reclaim the case and/or whether to transfer the case to a supervisory-instance court to be examined on its merits, – otherwise, those would be procedural activity not regulated by the law.

At the same time, applying to the above-mentioned officials after a judge renders a finding not to reclaim the case or not to transfer the case to a supervisory-instance court cannot be viewed as an indispensable condition for lodging a further appeal against judicial rulings with a higher supervisory instance authority. Any different understanding would lead to an unjustified increase of the number of the supervisory instances and would be inconsistent with the principle of legal certainty and the mission of the supervisory review proceedings as an additional tool for ensuring that judicial rulings are lawful.

7. In accordance with Article 377 of the Russian Federation Code of Civil Procedure, supervisory review appeals (representations) can be lodged with three judicial instance authorities: with the Presidium of the Supreme Court of a Republic, the Presidium of a Territorial or Regional Court, or the Presidium of an equal-status court, with the Judicial Chamber on Civil Cases of the Russian Federation Supreme Court or the Military Division of the Russian Federation Supreme Court, and with the Presidium of the Russian Federation Supreme Court.

The jurisdiction and the procedure for lodging supervisory review appeals (representations) stipulated by that Article vary depending on the level of the court of trial. The supervisory-instance court for judicial orders, decisions, and findings rendered by Justices of the Peace and for appellate decisions and findings rendered by district courts is the Presidium of the Supreme Court of a Republic, the Presidium of a Territorial or Regional Court, or the Presidium of an equal-status court (paragraph two, subparagraph one), whose ruling, in turn, can be appealed by interested persons with the Judicial Chamber on Civil Cases of the Russian Federation Supreme Court (paragraph two, subparagraph three); a finding rendered by that Chamber can be appealed to the Presidium of the Russian Federation Supreme Court, provided that such finding does not impair the uniformity of judicial practices (paragraph two, subparagraph five, and paragraph three).

In the meaning of Article 377, paragraph two, subparagraph three, of the Russian Federation Code of Civil Procedure read in conjunction with other provisions of that Article, supervisory review appeals (representations) against judicial rulings in cases within the jurisdiction of Justices of the Peace can only be lodged with the Judicial Chamber on Civil Cases of the Russian Federation Supreme Court if the case has been examined on its merits by way of the supervisory review procedure by the Presidium of the Supreme Court of a Republic, the Presidium of a Territorial or Regional Court, or the Presidium of an equal-status court; but if the judge of the Supreme Court of a Republic, a Territorial or Regional or other equal-status court rules not to reclaim the case or not to transfer it to the Presidium of that court to be examined on its merits and if such denial is confirmed as lawful by the President of that court, the interested person cannot lodge an appeal (representation) against orders, decisions, or findings rendered by Justices of the Peace or against appellate decisions or findings rendered by district courts with higher supervisory instances, namely, with the Judicial Chamber on Civil Cases of the Russian Federation Supreme Court and, after that, with the Presidium of the Russian Federation Supreme Court.

Thus, opportunities of supervisory appeal against judicial rulings rendered by a Justice of the Peace or an appellate-instance court – unlike any other effective judicial rulings – are limited and depend on the results of the examination of the appeal (representation) by the first supervisory instance: the Presidium of the Supreme Court of a Republic, the Presidium of a Territorial or Regional Court, or the Presidium of an equal-status court.

Such differentiation has to do with the special nature of the cases statutorily referred to the jurisdiction of Justices of the Peace. The federal legislature, proceeding from its discretionary powers in determining judicial protection methods and procedures and in ensuring effectiveness of justice, guided by the principles of saving resources of court proceedings and judicial decision irreversibility, may establish a procedure for reviewing the lawfulness and well-foundedness of judicial rulings to account for the special features of civil cases examined by Justices of the Peace, specifically, for the fact that their jurisdiction covers cases less significant in terms of the nature of claims and the value of lawsuits than civil cases within the jurisdiction of other first-instance courts (finding No. 110-O by the Russian Federation Constitutional Court, 15 May 2002).

Such narrowing of opportunities of supervisory appeal against judicial rulings rendered by Justices of the Peace is offset by the existence of an appellate procedure for re-examining them and is consistent with the objective of keeping procedural costs, including supervisory review proceedings costs, commensurate with the rights being protected, and makes it possible to avoid overloading the Russian Federation Supreme Court with less important cases and – considering that the federal legislature has the obligation, in carrying out legal regulation, to follow socially justified criteria to be applied in determining jurisdiction with regard to cases – cannot be viewed as impermissible or violating the constitutional requirement that everyone is equal before the law and the court. Besides, for the purposes of ensuring uniformity of judicial practices and legality, judicial rulings in cases within the jurisdiction of Justices of the Peace can be re-examined under Article 389 of the Russian Federation Code of Civil Procedure.

The provisions of Article 23 of the Russian Federation Code of Civil Procedure, which defines the categories of civil cases to be tried by a Justice of the Peace, as provisions not challenged by the applicants, are not examined by the Russian Federation Constitutional Court in the present case and, consequently, the Russian Federation Constitutional Court may not review the well-foundedness of referring specific civil cases to the jurisdiction of Justices of the Peace.

8. Article 389 of the Russian Federation Code of Civil Procedure, which empowers the President or a Deputy President of the Russian Federation Supreme Court to submit to the Presidium of the Russian Federation Supreme Court well-reasoned representations seeking re-examination of judicial rulings, by way of the supervisory review procedure, for the purpose of ensuring uniformity of judicial practices and legality, introduces a special procedure for initiating examination of judicial rulings, by way of the supervisory review procedure, in addition to the existing general regulation of preliminary proceedings before supervisory-instance courts, as stipulated by Articles 381 – 383 of that Code. That procedure is intended to be applied exclusively in instances when, unless substantial violations of the provisions of substantive or procedural law committed by lower courts are not rectified, it is impossible to provide for the rule of law and uniform application of law as required by the Russian Federation Constitution, *inter alia*, by its Articles 15, 19, 120, and 126. At the same time, the lodging by the above officials of the Russian Federation Supreme Court of representations seeking re-examination of effective judicial rulings, by way of the supervisory review procedure, affects the rights of persons participating in the proceedings, as defined by those judicial rulings. However, it follows from the constitutional principles of adversarial proceedings and the parties' equality of arms the related principle of the principle of optional action that procedural relationships in civil proceedings emerge, change, and are terminated mainly by the direct participants in substantive legal relationship in dispute, who can act through the court to exercise their procedural rights and use substantive law in dispute. It is intended that judicial proceedings are structured in such a way as to separate the court's case-resolving function from the functions of the litigants: in administering justice as its exclusive function (the Russian Federation Constitution, Article 118, paragraph one), the court must ensure a fair and impartial resolution of a dispute, providing the parties with equal opportunities to maintain their positions, therefore it cannot undertake to perform their procedural functions (judgment No. 4-P of the Russian Federation Constitutional Court, 14 February 2002, On Reviewing the Constitutionality of Article 140 of the Code of Civil Procedure of the Russian Soviet Federated Socialist Republic, and judgment No. 19-P of the Russian Federation Constitutional Court, 28 November 1996, On Reviewing the Constitutionality of Article 418 of the Code of Criminal Procedure of the Russian Soviet Federated Socialist Republic, and finding No. 166-O, 13 June 2002). This approach is also found in the recommendation Procedures for the Effective Implementation of the Basic Principles of the Independence of the Judiciary (adopted by the United Nations Economic and Social Council on 24 May 1989, judgment 1989/60), which stipulate, in particular, that no judge shall be required to perform functions that are inconsistent with her/his independent status.

Consequently, the President or a Deputy President of the Russian Federation Supreme Court, as a judge, may not submit representations for re-examination of judicial rulings, by way of the supervisory review procedure, on her/his own initiative. A different approach would lead to distortion of the nature of justice, the principle of adversarial proceedings and the parties' equality of arms in conducting judicial proceedings (the Russian Federation Constitution, Article 123, paragraph three) and the principle of optional action in civil proceedings, which details the above principle.

In the instances where the President or a Deputy President of the Russian Federation Supreme Court, acting in response to applications from interested persons, lodges such representation based on her/his conviction that judicial rulings rendered violate the uniformity of judicial practices and legality, she or he may not be on the court panel that will examine the case on its merits thereafter. Their participation in the examination of the case by the Presidium of the Russian Federation Supreme Court would prejudice the impartiality of the court and would contradict the principle of the

independence of judges. A similar position has been formulated by the European Court of Human Rights, which pointed out in *Svetlana Naumenko v. Ukraine*, 9 November 2004, § 97, that the practice of having a deputy President of a court, as a member of the presidium and a deputy President of the presidium, examine the protest lodged by him with the presidium of the court is incompatible with the impartiality of a judge hearing a particular case, since no one can be both plaintiff and judge in his own case.

Thus, proceeding from the constitutional principles of civil proceedings, the President or a Deputy President of the Russian Federation Supreme Court can exercise their power under Article 389 of the Russian Federation Code of Civil Procedure only when there is an application from interested persons (including those whose status empowers them by law to lodge applications in defence of public interests), subject to compliance with the general rules under Chapter 41 of that Code, and, *inter alia*, within the time-limits set by Article 376, paragraph two, Article 381, paragraph one, and Article 382, paragraph one, for lodging appeals against judicial rulings with a supervisory-instance court, reclaiming cases, and rendering findings based on the results of the examination of cases reclaimed. In such instances, the President or the Deputy President of the Russian Federation Supreme Court who submits a representation cannot participate in the examination of the case on its merits by the Presidium of the Russian Federation Supreme Court.

Any different construction of Article 389 of the Russian Federation Code of Civil Procedure would lead to arbitrary application thereof and, correspondingly, to uncertainty in substantive legal relationships in dispute and in procedural relationships emerging in connection with the dispute, to unlimited re-examinations of effective judicial rulings, which would violate both the principle of a fair trial before a tribunal and the principle of legal certainty and thereby would lead to unjustifiable limitation of the constitutional right to judicial protection, which is inconsistent with the requirements of Article 19 (paragraph one and paragraph two), Article 46 (paragraph one and paragraph two), Article 55 (paragraph three), Article 118 (paragraph one), and Article 123 (paragraph three) of the Russian Federation Constitution.

At the same time, in reforming supervisory review proceedings, including the procedures for initiating re-examination of judicial rulings, by way of the supervisory review procedure, by the Presidium of the Russian Federation Supreme Court, the federal legislature should, for the purpose of ensuring uniform application of law and in line with the Russian Federation Constitution and this judgment, specify the procedure for exercising the legal power granted by Article 389 of the Russian Federation Code of Civil Procedure.

9. The general legal principle of legal certainty presupposes the stability of legal regulation and enforceability of the delivered court judgments. Therefore, in establishing grounds for lodging appeals against and re-examining effective court judgments, the time-limits for lodging such appeals and in determining which judicial instances are competent to examine such appeals (representations), the legislature should – by virtue of the above principle – proceed from the requirement that civil relationship actors should have the opportunity, within reasonable limits, to foresee the consequences of their conduct and be certain that their officially recognised status and rights and obligations acquired are invariable.

9.1. The procedure for appealing, by way of the supervisory review procedure, of effective judicial rulings, as follows from the interrelated provisions of Chapter 41 of the Russian Federation Code of Civil Procedure, which stipulate that procedure, including Articles 376, 377, 381, 382, 383, and 389, allows the lodging of a supervisory review appeal (representation) with, and the reviewing of a judicial ruling by, three supervisory judicial instances consecutively within one year after the effective date of the ruling, and, according to the established law-application practices, that time-limit

does not include the time it takes to examine the supervisory review appeal (representation) or the time it takes the supervisory-instance court to examine the case reclaimed. The period is not defined during which an appeal deadline missed can be extended (Article 112, paragraph four, of the Russian Federation Code of Civil Procedure).

Consequently, in accordance with the current legislation of civil procedure of the Russian Federation re-examination of effective judicial rulings pursuant to supervisory review appeals (representations) can take place repeatedly and within an unlimited period of time.

With regard to judicial systems based on such regulation, judgments by the European Court of Human Rights emphasise that procedures providing for a possibility to challenge court judgments for an unlimited or very long period of time, including supervisory review proceedings not subject to any time-limit, result in uncertainty and instability of final judgments and are incompatible with the principle of legal certainty, which is one of the fundamental elements of the rule of law, and the right to a fair hearing (*Brumărescu v. Romania,* 28 October 1999, § 61, § 62; *Sovtransavto Holding v. Ukraine,* 25 July 2002, § 77; *Ryabykh v. Russia,* 24 July 2003, § 51, § 54; *Kehaya and others v. Bulgaria,* 12 January 2006, § 63, § 69; *Zasurtsev v. Russia,* 27 April 2006, § 49, *et al*.).

Under the above circumstances, it is the opinion of the European Court of Human Rights that recognising supervisory review proceedings as an effective remedy that must be exhausted to meet the criteria of admissibility of an application by European Court of Human Rights would give rise to legal uncertainty and render meaningless the six months rule to lodge an application with the Court (*Berdzenishvili v. Russia,* 29 January 2004; *Denisov v. Russia,* 6 May 2004).

9.2. As follows from Article 118 (paragraph two) of the Russian Federation Constitution read in conjunction with its Articles 126 and 127, civil proceedings applied by courts of general jurisdiction and arbitrage courts in the exercise of their judicial power should be the same for those courts in terms of principles and essential features.

Proceedings applied by arbitrage courts (Articles 292, 295, 299, and 303 of the Russian Federation Code of Arbitrage Procedure) do not provide for multiple supervisory instances (the only instance that has the power to re-examine effective court judgments rendered by arbitrage courts is the Presidium of the Russian Federation Higher Arbitrage Court), do not permit court judgments to be re-examined by way of the supervisory review procedure repeatedly, and set strict time-limits: a supervisory review appeal (representation) may be lodged within three months after the effective date of the latest judicial decision being challenged; the decision to admit or reject an appeal (representation) shall be rendered within five days; the decision as to the existence of grounds for re-examination of the case and for transferring the case to the Presidium of the Russian Federation Higher Arbitrage Court to be examined on its merits shall be rendered within one month; and the case shall be resolved on its merits within three months after the date of the finding to transfer the case to the Presidium.

In contrast, the Russian Federation Code of Civil Procedure fixes longer time-limits: an appeal (representation) may be lodged with a supervisory-instance court within one year from the effective date of the judicial ruling; a supervisory review appeal (representation) shall be examined by a supervisory-instance court within one month or, if examined by the Russian Federation Supreme Court, within two months; a case reclaimed shall be examined by a judge and the decision to transfer the case to a supervisory-instance court to be examined on its merits shall be rendered within two months, or, if examined by a judge of the Russian Federation Supreme Court, within four months (these time-limits may be extended to four months and six months respectively); a case shall be examined on its merits by the Presidium of the Supreme

Court of a Republic, the Presidium of a Territorial or Regional Court, or the Presidium of an equal-status court within two months; if examined by the Judicial Chamber on Civil Cases of the Russian Federation Supreme Court or the Military Division of the Russian Federation Supreme Court, within three months; and if examined by the Presidium of the Russian Federation Supreme Court, within four months. Considering that supervisory review proceedings may be performed consecutively by three judicial instance authorities, the supervisory review appeal process, with due regard for the cumulative effect of such regulation, may continue for several years, which is inconsistent with the principle of legal certainty implied by the Russian Federation Constitution, and the principle of irreversibility of court judgments which is based on that principle.

At the same time, if the above rules of the Russian Federation Code of Civil Procedure were to be found contradicting the Russian Federation Constitution and invalidated, that would create a gap in legal regulation that in this case cannot be filled by direct application of the Russian Federation Constitution and requires systemic changes to be made to current legislation on judicial organisation and on civil proceedings.

Considering that supervisory-instance courts now quash or alter a significant number of judicial rulings rendered by lower courts, thereby correcting substantial judicial errors and protecting rights violated, – eliminating existing supervisory procedures without creating at the same time a system to ensure timely prevention and correction of judicial errors would cause a procedural law vacuum and disorganise not only the work of supervisory-instance courts but also civil proceedings in general, and jeopardize the performance of the main function of justice: protection and effective reinstatement of human and civil rights and freedoms violated.

Therefore, the principle of legal fairness ensuing from the Preamble and Article 1 (paragraph one), Article 2, Article 15 (paragraph one and paragraph four), Articles 17, 18, 19, 46, and 118 of the Russian Federation Constitution, and the principle of the fairness of court decisions, based thereupon, as an indispensable condition of judicial protection of human and civil rights and freedoms obligate the Russian Federation Constitutional Court – for the purposes of protecting the fundamentals of the constitutional system of the Russian Federation and human and civil rights and freedoms, and maintaining a balance of constitutionally protected values, and with due regard for existing reality, – to refrain, in the present case, from finding that Article 376, paragraph one, Article 377, paragraph three, Article 381, paragraph two, paragraph three and paragraph six, Article 382, paragraph two, Article 383, paragraph two, Article 387, and Article 389 of the Russian Federation Code of Civil Procedure are inconsistent with the Russian Federation Constitution in that they provide for the availability of multiple supervisory instances, the possibility to have supervisory judicial rulings re-examined repeatedly, and an unlimited duration of supervisory appeal procedures and supervisory review proceedings.

Considering that supervisory review proceedings in the existing system of judicial instances can be viewed as indispensable for maintaining a balance between the constitutionally protected values of the fairness and irreversibility of court judgments during the period of transition to a new system of regulation only, the federal legislature should, taking into account the legal positions of the European Court of Human Rights and Resolution ResDH (2006)1 of the Council of Europe Committee of Ministers of 8 February 2006, establish procedures within a reasonable time frame to ensure effective and timely detection and re-examination of erroneous judicial rulings before they take effect and make legal regulation of supervisory review proceedings, on the basis of the Russian Federation Constitution and with due regard for this judgment, consistent with international law standards recognised by the Russian Federation.

9.3. The Code of Civil Procedure of the Russian Soviet Federated Socialist Republic did not grant citizens with a right to apply to a supervisory-instance court directly, and supervisory review proceedings were instituted only when a protest was lodged by officials of the court or Procurator's Office. Correspondingly, when a judicial ruling took effect, that meant at the same time that the citizen (unless she or he lodged a complaint with the Russian Federation Constitutional Court against violation of her or his constitutional rights by the statute applied or to be applied in her or his case) has exhausted all the domestic remedies available in determination of her or his rights and obligations.

That was the premise adopted by the Russian Federation Constitutional Court in confirming the right of citizens of the Russian Federation to lodge applications with the European Court of Human Rights against effective court decisions, whether being reviewed by a supervisory-instance court or not, and by the European Court of Human Rights, whose legal position is that the six-month time-limit for Russian citizens to lodge an application with that Court commences from the effective date of the judicial decision and is not suspended even if proceedings before the supervisory-review instance are initiated.

Under the current Russian Federation Code of Civil Procedure, which stipulates citizens' right to lodge appeals against judicial rulings with supervisory-instance courts, if a judge, having reclaimed a case at the request contained in the appeal, representation, or other petition, suspends execution of the judicial ruling being appealed, the act shall not be implemented in specific legal relationships until the supervisory-instance court completes the proceedings. Therefore, the act cannot become final (all the more so, since a supervisory-instance court, unlike the European Court of Human Rights, may not only establish a violation of a right, but also quash the judicial ruling resulting in such violation), and, consequently, until a decision is rendered by the supervisory-instance court, the domestic remedies available should not be deemed exhausted in the meaning of Article 46 (paragraph three) of the Russian Federation Constitution.

Thus, interested parties will be able to apply to the European Court of Human Rights after proceedings before the supervisory-review instance court are completed, provided that, when reformed by the federal legislature, supervisory review proceedings will be an effective remedy meeting all the requirements ensuing from the Russian Federation Constitution and the present judgment.

In view of the above and in line with Articles 6 and 68, Article 71, paragraph one and paragraph two, and Articles 72, 75, 79, and 100 of the Federal Constitutional Law On the Russian Federation Constitutional Court, the Russian Federation Constitutional Court

**hereby rules:**

1. That Article 376, paragraph one of the Russian Federation Code of Civil Procedure shall be found consistent with the Russian Federation Constitution, as the right thereby stipulated to lodge appeals against effective judicial rulings with supervisory-instance courts, granted to the persons participating in the proceedings and to other persons whose rights and legitimate interests are violated by those judicial rulings, as part of the existing legal regulation of civil proceedings, is an extra guarantee to secure the lawfulness of judicial rulings, to apply if all the opportunities available for reviewing such rulings using ordinary judicial procedures have been exhausted.

2. That Article 377, paragraph two, subparagraph three, of the Russian Federation Code of Civil Procedure, in respect of the provision forbidding the lodging of supervisory review appeals (representations) with the Judicial Chamber on Civil Cases of the Russian Federation Supreme Court against effective judicial rulings

rendered by Justices of the Peace or appellate courts, shall be found consistent with the Russian Federation Constitution, as, within the system of existing legal regulation of civil proceedings, the narrowing of opportunities for supervisory review appeal against such judicial rulings has to do with some special features of civil cases referred to the jurisdiction of Justices of the Peace and with the availability of appellate procedures for reviewing decisions rendered by them, and considering that the federal legislature should provide for observance of socially justified criteria of referring civil cases to the jurisdiction of Justices of the Peace.

3. That the interrelated provisions of Article 381, paragraph two and paragraph three, and Article 382, paragraph two, of the Russian Federation Code of Civil Procedure shall be found consistent with the Russian Federation Constitution, as, by virtue of the constitutional principles of civil proceedings, they do not permit the judge who examines a supervisory review appeal (representation) to render an arbitrary decision not to reclaim the case and not to transfer the case to a supervisory-instance court to be examined on its merits, obligate the judge in any event to transfer the case to a supervisory-instance court if there are statutory grounds for quashing or altering the judicial ruling being challenged, and make it impossible for the judge to render unreasoned decisions after examining a supervisory review appeal (representation) or a case reclaimed.

4. That Article 381, paragraph six, and Article 383, paragraph two, of the Russian Federation Code of Civil Procedure shall be found consistent with the Russian Federation Constitution, as, within the system of existing legal regulation of civil proceedings, it is implied that, in accordance with those legal provisions, the President of the Supreme Court of a Republic, the President of a Territorial or Regional Court, or the President of an equal-status court, the President or a Deputy President of the Russian Federation Supreme Court shall render decisions to reclaim a case and to transfer it to a supervisory-instance court to be examined on its merits subject to an application from the person who lodged the supervisory review appeal (representation), according to the same procedure, within the same time-limits, and based on the same grounds as established for the judge to render the same decisions in reviewing a supervisory review appeal (representation) and/or a case reclaimed.

5. That Article 387 of the Russian Federation Code of Civil Procedure shall be found consistent with the Russian Federation Constitution, as, within the system of existing legal regulation of civil proceedings, it is implied that substantial violations of substantive and procedural law to serve as grounds under this Article for quashing or altering judicial rulings rendered by lower courts by way of the supervisory review procedure shall only include errors in the construction and application of the law that have influenced the outcome of the proceedings and that, unless rectified, make it impossible to ensure effective reinstatement and protection of rights and freedoms violated or protection of statutorily protected public interests.

6. That Article 389 of the Russian Federation Code of Civil Procedure shall be found consistent with the Russian Federation Constitution, to the extent that the power thereby stipulated of the President or a Deputy President of the Russian Federation Supreme Court to submit a well-reasoned representation to the Presidium of the Russian Federation Supreme Court for re-examination of judicial rulings, by way of the supervisory review procedure, for the purpose of ensuring uniformity of judicial practices and legality, can only be exercised in accordance with the general rules of Chapter 41 of that Code, and within the time-limits set by Article 376, paragraph two, Article 381, paragraph one, and Article 382, paragraph one, for lodging appeals with the supervisory instance, reclaiming cases, and rendering findings after examining them, provided that the President or the Deputy President of the Russian Federation Supreme

Court who lodges the representation may not participate in the examination of the case by the Presidium of the Russian Federation Supreme Court.

That the federal legislature, in reforming supervisory review proceedings, including the procedures for initiating re-examination of judicial rulings, by way of the supervisory review procedure, by the Presidium of the Russian Federation Supreme Court, should – for the purpose of ensuring uniform application of laws and being guided by the Russian Federation Constitution and this judgment – specify the procedure for exercising the power stipulated by Article 389 of the Russian Federation Code of Civil Procedure.

7. That the constitutional-law content of Article 381, paragraph two, paragraph three, and paragraph six, Article 382, paragraph two, Article 383, paragraph two, Article 387, and Article 389 of the Russian Federation Code of Civil Procedure, as unfolded in this judgment, shall be universally binding and shall exclude any different construction thereof in law-application practices.

8. That in the present case, the Russian Federation Constitutional Court shall refrain from finding that Article 376, paragraph one, Article 377, paragraph two, subparagraph three, Article 381, paragraph two, paragraph three and paragraph six, Article 382, paragraph two, Article 383, paragraph two, Article 387, and Article 389 of the Russian Federation Code of Civil Procedure are inconsistent with the Russian Federation Constitution, to the extent that they provide for the availability of multiple supervisory instances, the possibility of excessively long procedures for lodging appeals against and re-examination of judicial rulings, by way of the supervisory review procedure, and other departures from the principle of legal certainty.

This shall not release the federal legislature from the obligation – on the basis of the Russian Federation Constitution and with due regard for the present judgment – to establish procedures within a reasonable time frame to ensure effective and timely identification and re-examination of erroneous judicial rulings before they take effect and to make legal regulation of supervisory review proceedings consistent with international law standards recognised by the Russian Federation.

9. That the proceedings shall be terminated:

with regard to the application lodged by citizen M.-S.A. Abakarov, as regards the review of the constitutionality of Article 381, paragraph five, of the Russian Federation Code of Civil Procedure;

with regard to the application lodged by citizen Ye.Yu. Oleinikova, as regards the review of the constitutionality of Article 388 of the Russian Federation Code of Civil Procedure;

with regard to the application lodged by citizen T.F. Polyakina, as regards the review of the constitutionality of Article 336 of the Russian Federation Code of Civil Procedure;

with regard to the application lodged by citizen R.P. Savelieva, as regards the review of the constitutionality of Article 380, paragraphs two, three and four, and of Article 382, paragraph three, subparagraph four, of the Russian Federation Code of Civil Procedure;

with regard to the application lodged by citizen E.A. Sizikov, as regards the review of the constitutionality of Article 16, paragraph one, subparagraph three, Article 20, paragraph two, subparagraph one, Article 112, Article 377, paragraph two, subparagraph three, of the Russian Federation Code of Civil Procedure.

10. That the law-application decisions rendered in the cases of public stock companies Nizhnekamskneftekhim and KhakasEnergo and in the cases of citizens M.-S.A. Abakarov, I.Zh. Gafiyatullin, N.R. Gilmutdinov, Ye.Yu. Oleinikova, S.V. Ponomaryova, S.P. Saveliev, R.P. Savelieva, and E.A. Sizikov, on the basis of the provisions of Article 381, paragraph two, paragraph three, and paragraph six, Article

382, paragraph two, Article 383, paragraph two, Article 387, and Article 389 of the Russian Federation Code of Civil Procedure, construed at variance with the constitutional-law meaning thereof, as unfolded by the Russian Federation Constitutional Court in the present judgment, shall be re-examined in accordance with the established procedure, if there are no other obstacles to prevent such re-examination.

11. That this judgment shall be final, not subject to appeal, become effective immediately after promulgation, operate directly, and require no confirmation by any other authorities or officials.

12. In accordance with Article 78 of the Federal Constitutional Law On the Russian Federation Constitutional Court, the present judgment shall be published without delay in the *Rossiyskaya gazeta* daily and in the *Collected Laws of the Russian Federation.* The present judgment shall also be published in *The Bulletin of the Russian Federation Constitutional Court.*

**The Russian Federation Constitutional Court**



*Source:*
*Rossiyskaya Gazeta. Federal Issue No. 4294, 14 February 2007*