

**THE PLENARY SESSION OF
THE RUSSIAN FEDERATION SUPREME COURT**

**RULING
No. 2, 12 February 2008**

**ON APPLICATION OF RULES OF CIVIL PROCEDURE
BY SUPERVISORY-REVIEW COURTS
IN CONNECTION WITH ADOPTION AND ENACTMENT
OF THE FEDERAL LAW NO. 330-FZ, 4 DECEMBER 2007,
ON INTRODUCTION OF AMENDMENTS TO THE RUSSIAN FEDERATION
CODE OF CIVIL PROCEDURE**

The Federal Law no. 330-FZ, 4 December 2007, On Introduction of Amendments to the Russian Federation Code of Civil Procedure introduced substantial amendments to Chapter 41 of the Russian Federation Code of Civil Procedure, which regulates proceedings before a supervisory-review court.

In view of questions that arise in the course of application of this Law by courts, the Plenary Session of the Russian Federation Supreme Court, being guided by Article 126 of the Russian Federation Constitution, hereby rules to provide courts with the following explanations:

1. In accordance with Article 376 § 2 of the Russian Federation Code of Civil Procedure (as amended by the Federal Law no. 330-FZ, 4 December 2007) court judgments may be appealed against to the supervisory-review court within six months after their entry into legal force, provided that the persons listed in Article 376 § 1 of the Russian Federation Code of Civil Procedure had exhausted other means of appealing against court judgments envisaged in the Code before the date when the court judgment entered into legal force.

Proceeding from the above provision, as well as from Article 379.1, Article 382 and Article 390 § 1 (6) of the Russian Federation Code of Civil Procedure (as amended by the Federal Law no. 330-FZ, 4 December 2007) this period shall be fixed for appeals against court judgments lodged with any supervisory-review court. If a supervisory-review appeal or a prosecutor's application were filed with a higher supervisory-review court after having obtained a finding to refuse remitting the supervisory-review appeal or the prosecutor's application for examination at the hearing before the supervisory-review court this does not entail recalculation of the above period.

Calculation of the above six-month period shall begin from the day that followed the entry of court judgments into legal force; it shall expire on the respective date of its final month. If there is no such date in the final month of the period, then it shall expire on the final date of this month. If the final date of the six-month period is a day-off, then the period in question shall expire on the working day following the day-off. If the supervisory-review appeal or the prosecutor's application have been submitted to a post office to be mailed before the midnight of the final day of the period this shall not be considered as a failure to comply with this period (Article 107 § 3, Article 108 of the Russian Federation Code of Civil Procedure).

If a supervisory-review appeal or a prosecutor's application were filed upon expiry of the six-month period, the judge shall issue a finding denying its examination on the merits and send it back to the person who filed it (Article 379.1 § 1 (3) of the Russian Federation Code of Civil Procedure).

Time spent on examination of a supervisory-review appeal or a prosecutor's application by a supervisory-review court shall not be included in the above period because it does not depend on the person who lodged the supervisory-review appeal or on the prosecutor who filed the application.

2. In accordance with Article 112 § 4 of the Russian Federation Code of Civil Procedure an application seeking to extend missed procedural deadline set by Article 376 § 2 and Article 389 § 2 of the Russian Federation Code of Civil Procedure, which was filed by the persons listed in Article 376 § 1 of the Code, shall be submitted to the court of first instance that examined the case. The above deadline may be extended upon a request of a legal entity as well as a physical person. However, it may be extended only under exceptional circumstances when the court considers that the reasons for its missing were justifiable in a situation, which actually made it impossible to lodge a supervisory-review appeal within the prescribed period. As far as physical persons are concerned, this situation may result from a serious disease, helpless state and other personal circumstances. As for legal entities, they actually have more opportunities to lodge their appeals within the prescribed period than physical persons, and such a situation may be recognised in any circumstances that do not depend on personal will of their top managers and (or) employees and make it impossible for them to lodge the supervisory-review appeal in good time.

In their findings to extend the deadline for lodging an appeal or to refuse its extension, judges shall make a detailed statement of the reasons for the decision taken. It shall be borne in mind that an application to extend the deadline for lodging an appeal may be granted if the situation in question took place within no later than one year after the challenged court judgment had entered into legal force. Circumstances relating to a failure to comply with the deadline for lodging a supervisory-review appeal that occurred upon expiry of one-year period do not have any legal significance and shall not be subject to review.

3. Courts shall bear in mind that proceedings of supervisory review of court judgments that entered into legal force as an additional mean of ensuring their lawfulness and well-foundedness implies that it may be used only if the persons concerned had exhausted other means of appealing against the relevant court judgment, envisaged by the Russian Federation Code of Civil Procedure, before this judgment entered into legal force (Article 376 § 2, Article 377 of the Russian Federation Code of Civil Procedure).

If a case has been examined by way of appellate or cassational procedure, then the relevant court judgments may be appealed against by way of supervisory review procedure not only by the person whose appeal initiated proceedings in the court of second instance to review the case but also by any other person who was involved in proceedings but did not file an appellate or cassational complaint. This provision also applies to persons who did not take part in the proceedings whose rights and legitimate interests were violated by a judgment that entered into legal force.

Pursuant to Article 379.1 § 1 (5) of the Russian Federation Code of Civil Procedure, if a supervisory-review complaint or a prosecutor's application concerns court judgments, which have not been appealed against by way of appellate or cassational review procedure, the judge shall issue a finding to send it back without its examination on the merits on the ground that it was filed in breach of jurisdiction rules set forth by Article 377 of the Russian Federation Code of Civil Procedure.

4. In accordance with Article 381 § 1 of the Russian Federation Code of Civil Procedure, judges referred to in Article 380.1 of the Code shall examine the supervisory-review appeal or the prosecutor's application on the basis of the material annexed to it or on the basis of the case file requested to be sent to the judge. Evocation of the case file shall be documented by a request of the judge responsible for

examination of the supervisory-review appeal or the prosecutor's application and shall be subject to immediate execution.

Execution of a court judgment may be suspended until supervisory-review proceedings are completed, provided that it is so requested in the supervisory-review appeal, in the prosecutor's application for supervisory review or in any other application (Article 381 § 1 of the Russian Federation Code of Civil Procedure).

Judges may decide on the matters relating to requesting the case file to be sent to them and to suspending the execution of the court judgment on different occasions as well as simultaneously depending on when the application to suspend the execution of the judgment, which had been appealed against by way of supervisory review procedure, was submitted. Judges shall not be empowered to suspend the execution of the court judgment on their own initiative.

5. Courts shall bear in mind that their decisions on supervisory-review appeals shall not be influenced by the documents annexed to the supervisory-review appeal, which have not been examined and evaluated by the court of first instance and in certain cases by the court of second instance.

6. Courts shall take note of the fact that Article 387 of the Russian Federation Code of Civil Procedure (as amended by the Federal Law no. 330-FZ, 4 December 2007) substantially reduced the number of grounds for quashing court judgments by way of supervisory review procedure as compared with the number of grounds set forth by the legislation that was in force earlier.

Within the meaning of Article 387 of the Russian Federation Code of Civil Procedure taken in conjunction with provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, not all violations of substantive or procedural law from those listed in Articles 363 and 364 of the Russian Federation Code of Civil Procedure may be considered as a substantial breach and may entail quashing or altering court judgments by way of supervisory review procedure, as different from the grounds for quashing court judgments by way of cassational review procedure.

Quashing or altering a judgment by way of supervisory review procedure shall be allowed only where it is impossible to restore and protect substantially infringed rights, freedoms and legitimate interests as well as public interests protected by law without elimination of a judicial error that took place in previous proceedings and affected their outcome.

The principle of legal certainty implies that courts shall not re-examine final court judgments only in order to hold second hearing and obtain another judgment. Another viewpoint of the supervisory-review court regarding how a case should be resolved shall not be a reason for quashing or altering the court judgment delivered by a lower court.

7. In accordance with Article 390 § 1.1 of the Russian Federation Code of Civil Procedure the supervisory-review court shall not be empowered to review the lawfulness of judgments in that part of them that are not appealed against, neither the supervisory-review court shall be empowered to review the lawfulness of judgments that are not appealed against.

At the same time, if a challenged part of the court judgment is made conditional upon its other part, which is appealed against by the appellant, the supervisory-review court shall also review that part regardless of whether the appellant so requested or not.

8. The Russian Federation Code of Civil Procedure contains no provision according to which one could appeal against court orders by way of appellate or cassational procedure. Hence, those court orders may be appealed against to the supervisory-review court by the debtor within the period provided for by Article 376 § 2 of the Code.

9. In view of adoption of the present Ruling, §§ 23, 24, 25 of the Ruling by the Plenum of the Russian Federation Supreme Court no. 2, 20 January 2003, On Certain Questions Arising in Connection with Adoption of the Russian Federation Code of Civil Procedure and Its Enactment shall be declared invalid.

V. LEBEDEV

President of the Russian Federation Supreme Court

V. DEMIDOV

Secretary of the Plenary Session,
judge of the Russian Federation Supreme Court

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