

CHIEF EDITOR'S NOTE ON THE REVIEW PROCEEDINGS IN RUSSIAN CIVIL PROCEDURE

DMITRY MALESHIN,
National Research University Higher School of Economics
(Moscow, Russia)

DOI: 10.17589/2309-8678-2016-4-4-4-6

Recommended citation: Dmitry Maleshin, *Chief Editor's Note on the Review Proceedings in Russian Civil Procedure*, 4(4) Russian Law Journal 4–6 (2016).

Any court decision may contain errors or simply be unjust or illegal. The right to appeal and review judgements is one of the basic rights that is recognized by most procedural systems. Appellate review is the opportunity for the parties try to correct an injustice that may be contained in a judgment. Two different systems of review are widespread in the world. Which one is used depends on what kind of judicial errors are considered by a court of the review instance: factual or legal errors.

The Russian system of review is influenced by continental European legislation, especially by French and German law. Such legislation provides for appellate and cassational procedures. However, uniquely, the Russian system also provides for supervisory proceedings.

Decisions of a court of the first instance that have not yet entered into force may be appealed through the appeals procedure. The court will assess all evidence presented in the first instance, as well as any new evidence. Cases in a court of an appellate instance are examined by panels of judges, not by a single judge. An appeal has to be filed within one month of the date on which a court of the first instance issued the decision in its final form.

A court of cassation is not entitled to consider matters if they were not established by a court of the first instance. Neither can it rule on the credibility of evidence. Participants cannot ask the court to consider new evidence, they can only present the evidence that was examined by the court of the first instance.

After the cassation process, a supervisory appeal may potentially be filed. A supervisory procedure is an exceptional feature of the Russian civil procedure. Review by way of supervision is a special procedure that allows additional re-examination of judgments which have already entered into legal force. It stems from the Russian Empire's legislation of the XVII–XIX centuries.

During the Soviet period, the right to apply to a supervisory court belonged only to a limited number of officials such as chief judges and their deputies and the Procurator General and his deputies. Participants in a case did not have such right. 8,618 decisions were revoked by way of supervision in 1980. In contrast, 12,500 were revoked by way of supervision in 1989.

In modern Russia, review by way of supervision is regulated in a different manner. It is stipulated in the Constitution and the new 2002 Civil Procedural Code. It exists in addition to the appeal and cassation instances and allows for the re-examination of judgments which have already entered into legal force and which may have already been decided under a cassational appeal. The right to apply to the court of supervision belongs only to the participants of the case and any other persons whose rights were abused by the judgment. Appeals via supervision may only be considered by presidium of the Supreme Court, by military assembly of the Supreme Court, by judicial tribunal of the Supreme Court for civil cases, by presidium of a military court, and by presidium of the Supreme Court of a "subject" (state) within the Federation. It is possible to appeal to a court of supervision within three months of the date on which a judgment enters into legal force.

When reviewing a case by way of supervision, the court only considers questions of law on the basis of materials available in the case. Although the supervisory instance may refuse to accept lower courts findings of fact, it has no power to establish new facts or to consider new evidence. As a general rule, the court verifies "the correctness of the application and interpretation of provisions of material law and norms of procedural law by the courts of the first and cassational instances" only within the limits of the arguments contained in the appeal. However, in the interests of legality, the higher court may also go beyond the limits of the appeal. The court of the supervisory instance may render a new judgment when it is not necessary to consider additional facts or evidence. Some 300,000 appeals a year are considered by the courts of general jurisdiction by way of supervision. 15,215 decisions were cancelled in the supervisory instance in 1996, 20,270 in 2002. That is $\frac{1}{3}$ of all abolished decisions. In contrast, 17,482 decisions were abolished in the supervisory instance in 2004 (after the adoption of the new CCP). That is 20% of all abolished decisions.

The possibility of re-examining a judgment which has already entered into legal force is a moot point. Does it conflict with the principle of *res judicata*? There are two points of view. Some scholars believe that the supervisory instance is an additional opportunity to correct the decision and rectify judicial errors. Others emphasize that

it conflicts with the principle of *res judicata*. The position of the European Court of Human Rights is interesting in this context. In *Ryabykh v. Russia*, No. 52854/99 dated July 24, 2003, it simultaneously maintains two different positions on the Russian supervisory instance. On the one hand, it believes that review by way of supervision conflicts with the principle of *res judicata* (Art. 52, 55–57 of *Ryabykh v. Russia*, Art. 25 of *Pravednaya v. Russia*). On the other hand, it does not infract it because it is used to rectify judicial errors (Art. 25, 28 *Pravednaya v. Russia*, Art. 52 of *Ryabykh v. Russia*).

Meanwhile, the Russian supervisory procedure was reformed in 2010 and the right to appeal was limited to a strict number of cases. Nowadays, the supervisory appeal is the exception to the rule.