

## ADDITIONAL PROCEDURES IN CASSATION AND SUPERVISION PROCEEDINGS OF CIVILISTIC PROCEDURE

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The subject of the research is the additional powers of the Chairman of the Supreme Court of the Russian Federation in relation to cassation and supervisory complaints.

The purpose of the article is to substantiate the necessity or redundancy of certain additional powers of the Chairman of the Russian Supreme Court taking into account the nature of such powers and the conditions for their application.

The methodology. Analysis and synthesis, dialectical method as well as formal legal interpretation of Russian legislative acts and judicial practice of Russian Supreme Court were used.

The main results. Since the transformation of the three-tier supervisory proceedings into a system of two cassation and one supervisory instance, as well as the liquidation of the Supreme Arbitration Court, the powers of the Chairman of the Supreme Court of the Russian Federation have spread to a fairly wide range of relations that allow influencing the movement of the case in the cassation and supervisory instance, and on itself initiation of a case in a supervisory instance. Moreover, such activities are far from always regulated by the norms of the law.

The Chairman of the Supreme Court of the Russian Federation (or his deputy) currently has leverage over the possibility of considering a case in the cassation instance of the Supreme Court of the Russian Federation (Judicial Collegium of the Supreme Court) and in the supervisory instance (Presidium of the Supreme Court). These possibilities are called control and substitute in the article. Control powers should include: 1) regulation of key deadlines in cassation and supervisory proceedings; 2) interference in the procedure for filtering complaints. The procedure and conditions for the use of these powers are not regulated in the procedural codes. Having such powers in relation to procedural terms, the President of the

Supreme Court actually influences the very possibility of initiating a case in a court of cassation or supervisory instance, as well as the duration (and, accordingly, the quality) of the examination of the complaint. The intervention of the Chairman of the Supreme Court of the Russian Federation in the procedure for filtering complaints has a clearly pronounced discretionary nature, moreover, it is selective. It would not be superfluous to point out that such as "order" in itself creates conditions for its abuse both by the participants in the case and by the courts. The substitute authority is the right of the Chairman of the Supreme Court to initiate supervisory proceedings on his own initiative, contrary to the basic rule of civil proceedings based on the principle of discretion (the case is initiated by the person whose rights have been violated). Supervisory proceedings are currently intended to appeal against judicial acts adopted by the Supreme Court of the Russian Federation itself when considering cases in the first, appeal and cassation instances. However, among the objects of appeal there are also acts of the Judicial Collegium of the Supreme Court, applications to which are possible with complaints against acts of any lower courts, with some restrictions on the decisions of justices of the peace (Article 390.4 of the Civil Procedure Code; Article 291.1 of the Arbitration Procedure Court). In this regard, the supervisory authority must continue to be viewed as the final link in the system of reviewing judicial acts. However, the system for reviewing judicial acts is very contradictory. On the one hand, there are a number of strict rules that cut off certain types of judicial acts from appeal; filtering complaints in the second cassation and supervision; establishing special rules for the jurisdiction of complaints. On the other hand, it is possible not to comply with these strict rules and directly contact the Chairman of the Supreme Court of the Russian Federation.

This extraordinary power of the Chairman of the Supreme Court of the Russian Federation has been preserved, precisely because the Russian legislator firmly and consistently adheres to the conviction that it is necessary to leave at least one official who is not a party to the case the right to initiate an audit of a judicial act.

Conclusions. The extraordinary powers of the Chairman of the Supreme Court are of an extra-procedural nature, at best they are based on the rules of record keeping (instead of the law), are selective and opaque.

## 1. Introduction

The liquidation of the Supreme Arbitration Court of the Russian Federation in 2014 concentrated the entire completeness of judicial supervision in the Supreme Court of the Russian Federation. The powers of the Chairman of the Supreme Court of the Russian Federation only for this reason have significantly expanded. However, it makes sense to look at the sole, objectively unrestricted powers of the Chairman in some "sensitive" procedural moments that determine the movement of a cassation or supervisory complaint in the Supreme Court of the Russian Federation.

Over the past 20 years, after the accession of the Russian Federation to the Council of Europe and the adoption of the jurisdiction of the European Court of Human Rights, there has been, in fact, a continuous reform of the institution of revision of judicial acts in civil proceedings. Russian legislation has painfully tried to free itself from the main shortcomings of the revision system, identified by the European Court. A complete analysis of these decisions is not the purpose of the work, we only note that the practice of initiating a case in a third-instance court by a person who is not a party to the case was named one of such shortcomings. The Court considers that the right of a party to litigation to be illusory if the State's legal system stipulates that a final, legally binding judgment can be quashed by a higher court at the request of a public official.<sup>1</sup>

It should be noted that the European Court of Human Rights initially assessed the norms of supervisory proceedings contained in the Civil Procedure Code of 1964, adopted in the USSR. In accordance with the Civil Procedure Code of 1964, proceedings in the court of the supervisory instance were initiated on the basis of protests lodged by officials of the court and the prosecutor's office (Articles 319, 320 of the CPC of

1964). The grounds for bringing a protest were the broadest: checking the prosecutor's office itself; appeals to the prosecutor or judge of a party to the case; publication in the media; appeal of the Ombudsman to officials of the court or prosecutor's office. The participants in the trial could not initiate a complaint on their own, they could only appeal to the relevant official with a request to file a protest. During the development of the Civil Procedure Code of 2002, an attempt was made to change the range of subjects entitled to initiate supervisory proceedings. The protest as a form of appeal to the supervisory instance court was eliminated. The right of supervisory appeal was granted to the persons participating in the case (Article 376 of the Code of Civil Procedure of 2002). Officials of the court and prosecutor's office were removed from this process, but not completely. They ceased to be the *main and only* bodies on whose applications supervisory proceedings were initiated, but they did not completely lose this function [1, p.215-216].

Legislative reformers neatly removed the prosecutor from such subjects, however, they did not show such courage in relation to court officials. The procedural rules on the powers of the Chairman of the Supreme Court of the Russian Federation have not changed over the years of reform, on the contrary, they have been supplemented with new opportunities.

Since the transformation of the 3-tier supervisory proceedings into a system of two cassation and one supervisory instance, the disputed rights of the Chairman of the RF SC have extended to the second cassation instance - the Judicial Collegium of the Supreme Court of the RF. The problems of the influence of an official have now become problems of the arbitration courts as well, since the Supreme Arbitration Court was liquidated.

The Chairman of the Supreme Court of the Russian Federation (or his deputy) currently has leverage over the possibility of considering a case in the cassation instance of the Supreme Court of the Russian Federation (Judicial Collegium of the SC) and in the supervisory instance (Presidium of the SC). The range of these possibilities is wide: from control to substitute for the will of others.

<sup>1</sup> For example: the judgment of 22.06.1999 on complaint of Tumilovich v. Russia № 47033/99; the judgment of 24.07.2003 on complaint of Ryabykh v. Russia № 52854/99.

*Control powers* should include:

- 1) regulation of key deadlines in cassation and supervisory proceedings;
- 2) interference in the procedure for filtering complaints.

The *substitute powers* is the right of the Chairman of the Supreme Court to initiate supervisory proceedings on his own initiative, contrary to the basic rule of civil proceedings based on the principle of discretion (the case is initiated by the person whose rights have been violated).

Supervisory proceedings are currently intended to appeal against judicial acts adopted by the Supreme Court of the Russian Federation itself when considering cases in the first, appeal and cassation instances. Does this mean that supervisory proceedings are "elitist" and judicial acts adopted in other parts of the judicial system are not intended for supervisory appeal? No, since among the objects of supervisory appeal there are also acts of the Judicial Collegium of the SC, and this is the second cassation, appeal to which is possible with complaints against acts of any lower courts, with some restrictions for decisions of justices of the peace (Article 390.4 of the Civil Procedure Code; Article 291.1 of the Arbitration Procedure Code). In this regard, the supervisory authority must continue to be viewed as the final link in the system of reviewing judicial acts.

## 2. Control powers

The regulation of the terms of cassation and supervisory proceedings is the first of the directions of influence we have outlined on the possibility of considering a case in the relevant instances. The key deadlines here should be recognized as the deadline for filing a complaint and the timeframe for studying the complaint. Both the President of the Supreme Court can influence the one and the other.

With regard to the second cassation proceedings, carried out in the Judicial Collegium of the Supreme Court of the Russian Federation, it was established that the Chairman of the Supreme Court (or his deputy) has the right to disagree with the decision of the judge of the Supreme Court on the issue of restoring the time limit for filing a cassation appeal (both on the restoration and on

the refusal to restore the time limit). ), and make a determination of the opposite content (part 4 of article 390.3 of the CPC). A similar provision is contained in Part 4 of Art. 291.2 APC.

The Chairman of the Supreme Court also has the right to disagree with the ruling on the issue of restoring the time limit for filing a supervisory complaint (both on the restoration and on the refusal to restore the time limit), and to make a determination of the opposite content (part 4 of article 391.2 of the CPC, part 6 of Art. 308.1 APC).

The next key term is the term for a judge of the Supreme Court of the Russian Federation to study complaints regarding their admissibility for consideration in a cassation or supervisory procedure.

For cassation complaints, the term for their study in the Supreme Court is 2 months or 3 months if the case was also requested for study. It is possible to extend the terms for studying cassation complaints (part 2 of article 390.8 of the CPC, part 2 of article 291.7 of the APC) by the Chairman of the Supreme Court up to 2 months. The condition for the extension is the reclamation of the case itself for study together with the complaint, and its complexity. The procedure for extending the time limits for studying supervisory complaints is similar (part 2 of article 391.6 of the CPC; part 2 of article 308.5 of the APC).

To the specified powers of the Chairman of the Supreme Court among lawyers, if not positive, then quite neutral attitude. It is noted that the powers of the Chairman are established by law, and in the realization of organizational and administrative powers, the Chairman has no right to allow actions (inaction) that limit the independence of judges, put pressure on them, as well as use other methods of administrative pressure aimed at influencing on justice [2, p. 35 - 42].

Meanwhile, having similar powers in relation to terms, the Chairman of the Supreme Court actually influences the very possibility of initiating a case in a court of cassation or supervisory instance, as well as the duration (and, accordingly, the quality) of the examination of the complaint. The declaration that the Chairman of the Supreme Court "has no right to allow ..." is one thing, and the absence in the law of a procedure according to which the Chairman learns

about the situation, checks the correctness of the judge's actions, assesses the need to restore or extend the time limits certain actions is a reality in which there is opportunity for abuse.

The supervisory and cassation complaints received by the Supreme Court undergo the so-called "filtration" - determination of the grounds for transferring the complaint with the case for consideration in the court session. Note that there is no continuous control over the correctness of the filtering by the Chairman of the Supreme Council. It is not the Chairman of the Supreme Court who is responsible for resolving the issue of admissibility of the complaint, but the judge, to whom the complaint was submitted for consideration at this stage. His disclaimer verdict is final.

Yu.V. Tai notes that one judge of the Supreme Court of the Russian Federation is studying the supervisory appeal, thereby calling into question the result of the judges of the Supreme Court, equal in status, who passed a collegial judicial act in cassation proceedings, which contradicts both the established world practice and common sense [3, p. 64-83].

However, if we leave outside the framework of the fact of the sole examination of the complaint by the judge, the procedure itself for checking the cassation, supervisory complaint for its admissibility corresponds to the essence of the instance, the purpose of which is to verify the legality of a judicial act that has entered into force. The supervisory instance, in addition to this, has the function of ensuring the unity of judicial practice, and the function to develop law. Therefore, as has been repeatedly noted in the decisions of the ECHR, the mere desire to once again check the judicial act for a miscarriage of justice cannot be considered a sufficient reason to initiate cassation and supervisory proceedings. Complaints received must pass an applicability test.

Some authors believe that the elimination of complaints, which, although they may be aimed at eliminating significant or typical errors, but do not contribute to the development of law, indicates the "inaccessible" nature of the high inspection authorities [4, p. 42-46]. I would like to note that the essence of the "third" instance court

presupposes the presence of certain conditions and barriers on the way to the consideration of the complaint in the court session, in connection with which the filtration of complaints is a necessary mechanism to ensure the protection of decisions that have entered into legal force, and the reproach for "inaccessibility" seems inappropriate.

In addition (and this is to the issue of accessibility), in accordance with part 3 of article 390.7 of the CPC and part 8 of article 291.6 of the APC, the Chairman of the Supreme Court (or his deputy) has the right to disagree with the decision of the judge of the Supreme Court on refusal to transfer the complaint to consideration in a court session, cancel this determination and refer the case with a complaint for consideration at a court session. The same rule exists in supervisory proceedings - the Chairman of the Supreme Court has the right to disagree with the judge's ruling on the refusal to transfer a supervisory complaint for consideration on the Presidium of the Supreme Court of the Russian Federation, cancel it and submit the complaint with the case for consideration by the Presidium (Part 3 of Art. 391.5 of the Code of Civil Procedure, Part 7 of Article 308.4 of the APC).

The problem is that the question of how exactly the Chairman of the Supreme Court learns about the judge's ruling made has not been resolved by law. The appeal of interested persons to the Chairman of the Supreme Court is implied, but its procedure and terms are not established in the law. Moreover, the law does not contain any criteria, guided by which the Chairman of the Supreme Court comes to his decisions. The expression "the right to disagree" with how the issue was resolved by the judge of the Supreme Court, as it were, initially presupposes special wisdom and infallibility of the Chairman of the Supreme Court or his deputy and the absence of the need to establish at least some framework for this official. Meanwhile, the procedural rules, on the basis of which the Chairman of the Supreme Court uses this authority, should be contained directly in the codes.

It is impossible to agree with the position expressed in which the examination of the complaint by the Chairman of the court is recognized as going beyond the procedural form,

and its terms and order are recognized as determined by the internal rules of court proceedings; but at the same time it is recognized that the absence of prescribed procedures in the law cannot be regarded as a violation of the principle of legal certainty and the rule of law [5, p. 14-19]. Objections are raised not only by the authors' willingness to recognize non-procedural activities as permissible, but also by ignoring the fundamental rule that procedural norms can only be established by law (Article 1 of the CPC, Article 3 of the APC), and not by the rules of office work.

An appeal to the Chairman of the Supreme Court could be considered as a kind of "internal" appeal of judicial acts, when interim judicial acts (rulings) are appealed not to a higher court, but within the same court, the judge of which issued the ruling. But even in this case, the procedure and conditions for such procedural activities require clear regulation. In particular, an answer is required to the question of whether it is necessary to make a continuous check of the definitions adopted following the examination of the complaint, or whether it will remain a selective, initiated party to the case. In any case, the lack of legal regulation makes such powers non-procedural.

Among lawyers, however, a conciliatory attitude towards such activities of the Chairman of the Supreme Court is affirmed and even a willingness to consider it procedural.

So, A.V. Yudin identifies several forms of participation of the chairman of the court, including control and verification of rulings issued by the Supreme Court of the Russian Federation in the course of cassation and supervisory proceedings; and initiating a supervisory review procedure. He notes that the powers of the Chairman of the Supreme Court have exactly procedural, and not administrative, organizational or other quality. His powers are of an auxiliary (additional) nature. As a result of their implementation, it is the procedural and legal consequences that arise (for example, the court of cassation begins to consider the case with the complaint as a result of the Chairman's cancellation of the ruling on the refusal to transfer the complaint to the Judicial Collegium of the SC).

However, he does not deny the fact that the powers of the chairman derive from his official position and are somehow predetermined by the power belonging to him [6, p.27-34].

To impart the quality of "procedural" in the legal press to the refusal definitions it is advised to apply the general rules of appeal [7, p. 12-38]. There is a position that the right to disagree with a refusal determination in cassation and supervision coincides with the general rules of cassation and supervisory review and does not allow asserting its non-procedural nature. The institution of officials is proposed to be considered as a manual way of correcting judicial errors that were not eliminated in the instance; and since the number of such interventions is minimal, there will be no systemic violations of legal certainty, and the conclusion that the institution of officials contradicts the essence of judicial proceedings and violates the principle of legal certainty is formal [8, p. 60-76].

As you can see, the noted approach is characterized by a conciliatory attitude towards the right of the Chairman of the Supreme Court to cancel the waived rulings and refer the case for consideration to the court session. This order is even recognized as "procedural" quality. However, it is impossible to agree with the assessment of the requirements of legal certainty as "formal", which can be neglected. Such a "conciliatory" approach, not only does it call black - white, extra-procedural activity - procedural, does not take into account the redundancy of this activity and its selective nature. Selective use of a power that can seriously affect the fate of a case entails abuse.

It seems that G.L. Osokina, calling it a "non-procedural" order, give a more accurate assessment of such rights of the Chair and noting the following shortcomings: 1) the solution of the issue depends not on the law, but on the discretion of the official; 2) another stage in the supervisory (cassation) instance has appeared: it is the due to the established law enforcement practice, interested parties are required to file a repeated complaint [9, p. 705]. Indeed, the analyzed authority has not lost its "extra-procedural features", retains the possibility of interference by officials in the dispositive base of civil proceedings [10, p. 106] and creates an additional stage within the already

complex law enforcement cycles, which are cassation and supervisory proceedings.

I.V. Rekhtina also writes about the redundancy of such powers, noting that such "control over control" complicates the appeal procedure. However, she notes that such a right of the Chairman of the Supreme Court was perceived positively by many judges, as an additional guarantee of the correction of judicial errors [11, p.81].

The highest judicial bodies are created with a specific (but also a higher) purpose, and not for solving petty issues. Foreign experience shows that access to a higher instance should be limited in order to allow the court to concentrate on those cases that deserve increased attention, because they raise important legal questions for society as a whole. So, all the reforms that change the procedure for accessing the Federal Supreme Court of Germany can be called a search for a balance between finding justice in each specific case and the global idea of clarification and development of the law, which is inherent in every Supreme Court [12, p. 157, 167].

Therefore, making the Supreme Court an independent unit, creating three instances within it that work exclusively for themselves, while endowing the Court with some petty competence in the fuss around filing complaints means depriving the Supreme Court of its true purpose - to consider the most important issues.

The intervention of the Chairman of the Supreme Court of the Russian Federation in the procedure for filtering complaints has a clearly expressed discretionary nature, moreover, it is selective. It would not be superfluous to point out that such an "order" in itself creates conditions for its abuse both by the participants in the case and by the courts.

### **3. Substitute powers**

The right to file a complaint against a judgment belongs to the persons participating in the case. Therefore, realizing the right to submit a submission provided for by Articles 391.11 (former 389) of the CPC, 308.10 of the APC, the Chairman of the Supreme Court actually "replaces" with himself and his actions the persons participating in

the case (and directly interested in the results of the case). Here we are already talking not just about the "control" action of the Chairman, correcting the actions of the judge subordinate to him, this is the initiation of supervisory proceedings at the will of an official who is not a party in the case.

And again, both in the legal press and in the position of the Constitutional Court of the Russian Federation, a conciliatory attitude towards such activities is formed.

Thus, it is proposed to see in the so-called special order of supervisory proceedings a resemblance to "direct cassation": a special form of supervisory proceedings could play the role of "direct cassation" if the procedure for applying to the Presidium of the RF SC is changed. For this, the rules of "permissive cassation" can be used, establishing for the person participating in the case the obligation to obtain permission from the Supreme Court to directly appeal a judicial act [13, p. 112-113].

The position of the Constitutional Court with regard to Article 389 of the former Civil Procedure Code seems toothless. Considering that the prohibition of the Chairman of the Supreme Court, who made a submission to the Presidium of the Supreme Court, to participate in the consideration of the submission and the case in the Presidium, would be sufficient, the Constitutional Court actually agreed that the procedural legislation remains a method of emergency intervention in any civil case. The expression "no one can be a judge in their own case" was one of the arguments in the complaint filed with the Constitutional Court from OAO Nizhnekamskneftekhim. Obviously, the applicant was pleased that the words he found were so convincing. However, as the lawyer of OAO Nizhnekamskneftekhim A.R. Sultanov wrote, in the complaint against Article 389 of the CPC there were other arguments, more significant and weighty [14, p.166-172; 15, c.118-145], which the Constitutional Court ignored. And it turned out that the CC actually approved the most important mistake (the possibility of making a submission).

Part 1 of Article 391.11 of the CPC and 308.10 of the APC does not specify which decisions as an object of appeal are in question. Literally interpreted, it can be concluded that such an object

can be any decision that has entered into legal force, since the generic term "decision" can be used to refer to judicial acts of all links of the judicial system. The only condition for addressing is the "fundamental nature" of the violation. Thus, the Chairman of the Supreme Court receives in fact extraordinary powers to correct a miscarriage of justice, which he himself defines as fundamental. To appeal to the Chairman of the Supreme Court with an application for making a supervisory submission, it is not required to follow the sequence of appealing a judicial act (rules of jurisdiction when appealing).

M.Sh. Patsatsia considers that the submission of the Chairman of the Supreme Court is an institution that can be used to cancel or change in the supervisory procedure any judicial decision, if its appeal has occurred within the 6-month period. Compliance with the rules of jurisdiction established in part 2 of article 391.1 of the CPC is not required, since when applying to the Chairman of the Supreme Court, there is a "special" procedure for supervisory appeal, and in a special supervisory order, you can appeal against those judicial decisions that have not been appealed in the general supervisory order, if the possibilities of appeal and cassation check are exhausted or unavailable [16, p.133-144].

V.P. Skobelev reasonably notes that the approach, in which a court official makes a submission and thereby initiates proceedings in his court, leads to a confusion of the procedural functions of administering justice and seeking judicial protection [17, p. 46].

Claims to the "special" procedure for supervisory proceedings may also take place in connection with the operation of the rules of appeal for persons not involved in the case. The law allows them to file complaints (appeal, cassation, supervisory), for them there are no obstacles for filing a complaint with the Chairman of the Supreme Court, since the law (article 308.10 of the APC; article 391.11 of the CPC) refers to "interested parties". Moreover, they are not bound by the rule of procedural estoppel (part 2 of article 209 of the CPC) and can dispute the facts and legal relations enshrined in a decision that entered into legal force [18, p. 137-138]. It turns out, among

other things, that a special supervisory procedure can be started by a person who did not take part in the case, through his appeal to the Chairman of the Supreme Court.

Thus, the system for reviewing judicial acts is subject to imbalance. On the one hand, we see a heap of strict rules: 1) cutting off certain types of judicial acts from appeal; 2) filtering complaints in the second cassation and supervision; 3) establishing special rules for the jurisdiction of complaints within the review system. On the other hand, it turns out that all these strictness can be ignored and simply turn to the Chairman of the Supreme Court of the Russian Federation.

In the science of civil procedural law, the stable term for the activity of the Chairman of the Supreme Court is "discretionary powers". This is yet another manifestation of "resignation" to a controversial norm that has never been removed from the procedural codes. It also substantiates that the discretionary powers of the Chairman of the Supreme Council, and the procedure for their implementation are poorly regulated, options for such regulation are proposed [19, p.57-64; 20, pp. 10-61; 14, c. 166-172].

We believe that it is still possible to use the term "extraordinary" and not just "discretionary" in relation to this power of the Chairman of the Supreme Council. In our opinion, there are two reasons for this.

First, the Russian legislator ignores the judgments of the European Court of Human Rights, which, as already mentioned above, repeatedly declared the procedure for the initiation of proceedings by officials in a supervisory instance court to be inadmissible. In fact, we are talking about a violation of international legal obligations related to the implementation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Secondly, for the submissions of the Chairman of the Supreme Court submitted to the Presidium of the Supreme Court, there is an extremely preferential procedure, which does not provide for the observance of the sequence of appeals and exempts the Chairman's submissions from preliminary examination by the sole judge of the Supreme Court, which is subject to supervisory

complaints. The ratio of the terms of appeal of the Chairman of the Supreme Court with the general procedure for supervisory appeal has not been determined either.

This extraordinary power has survived, we will argue, precisely because, despite the position of the ECHR, the Russian legislator firmly and consistently adheres to the belief that it is necessary to leave at least one official who is not a party to the case the right to initiate a revision. The Chairman (Deputy Chairman) of the Supreme Court of the Russian Federation was retained as such an official.

This sequence is easy enough to follow. This conviction is reflected already in the Resolution of the Constitutional Court of the Russian Federation of 05.02.2007<sup>2</sup>, which verified the norms of the Civil Procedure Code on supervisory proceedings. Among other norms in the Constitutional Court, Article 389 of the previous version of the Civil Procedure Code was also challenged, which provided for the submission of the President of the Supreme Court to the Presidium of the Supreme Court. Not recognizing this provision as unconstitutional, the Constitutional Court suggested that the legislator simply concretize the procedure for exercising the powers provided for in Art. 389 of the CPC (paragraph 6 of clause 8 of the reasoning part of the Resolution of 05.02.2007). Note, that no concretization followed.

The next step is the unification of procedural legislation in the worst possible scenario, when the norms of the APC on supervisory proceedings (recognized by the ECHR as an effective domestic remedy<sup>3</sup>) are replaced by the norms of the CPC. For

the sake of building a more rigid system, an efficiently functioning institution is sacrificed - supervisory proceedings in the arbitration process, and the very existence of the Supreme Arbitration Court, the Presidium of which ensured this efficiency in supervisory proceedings. As part of this activity, the Federal Law of April 28, 2014 introduces Article 308.10 into the APC, which provides for the right of the Chairman of the Supreme Court to make a submission by way of supervision.

This activity indicates that the Russian legislator does not want to abandon the extraordinary powers of an official - the Chairman of the Supreme Court of the Russian Federation. This is how the "supervisory protest" known to the Soviet period is preserved, the very appeal of an official who is not a party to the case, the very fact of which was repeatedly recognized in the judgments of the ECHR as inconsistent with the Convention. And although neither society nor the judicial system needs such a rudiment, the Russian legislator persistently maintains a "protest", believing that for the decisions of the Russian courts there must be a certain authorized entity capable of annulling the wrong result of judicial activity by one order.

Separate mention should be made of the wording of Articles 391.11 of the Civil Procedure Code and 308.10 of the Arbitration Procedure Code on the grounds for making a submission. They are formulated as follows: "fundamental violations of substantive law or norms of procedural law, which influenced the legality of the contested court decisions and deprived the parties to the disputed substantive legal relations of the possibility of exercising the rights guaranteed ... by the code, including the right to access to justice, the right to a fair trial on the basis of the principle of adversariality and equality of the parties, or significantly limited these rights "(part 1 of article 391.11 of the CPC; part 1 of article 308.10 of the APC). We believe that the cited norm contains an element of arbitrariness and combines the incongruous. If necessary, in any case, you can find

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<sup>2</sup> Resolution of the Constitutional Court of 05.02.2007 No. 2-P at the request of the Cabinet of Ministers of the Republic of Tatarstan, complaints from OAO Nizhnekamskneftekhim and Khakasenergo, as well as complaints from a number of citizens.

<sup>3</sup> For example: Decision of the ECHR of 12.05.2015 on the admissibility of complaint No. 38951/13 "Robert Mikhaylovich Abramyan, complaint No. 59611/13" Sergey Vladimirovich Yakubovskiy and Alexey

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Vladimirovich Yakubovskiy v. Russian Federation"; Decision of the ECHR of 18.10.2016 on the admissibility of application No. 16559/16 "V.Sakhanov v. The Russian Federation".



violations related to the fact that someone was deprived of the realization of at least one of the rights guaranteed by the Code.

In addition, there are reasonable doubts in the legal press that the higher court is able to correctly assess the circumstances of the case, since it is not included in the clarification of the factual side of the case, which, in particular, limits the adequacy of the judgments of the higher courts when interpreting the law [21, p.45- 65].

When restructuring the courts in the civil and arbitration process, the possibility of control of the Supreme Court of the Russian Federation over the legality of judicial acts of lower courts is formally preserved, although violations of the law must be "fundamental", which is arbitrarily established by the higher courts [22, p. 28-42].

The stated procedure, according to T.V. Sakhnova, does not differ in the clarity of the concept and does not fit into the general algorithm of supervisory proceedings. A complaint to the Chairman of the Supreme Court may be filed without realization the right to appeal to a court of the supervisory instance in a general way. In fact, established two independent and equivalent from the point of view of the possibility of their use by interested parties, procedures for initiating supervisory proceedings [23, p. 758-759].

M.Sh. Patsatsia sees in the powers of the Chairman of the Supreme Court a symbiosis of procedural and administrative principles, and the administrative principle is not inertia, but to a large extent a reflection of the state of affairs in legal proceedings, including the quality of consideration of cases in the first and appeal instances. Such rights at the Chairman can be temporarily recognized as an acceptable option, and when creating cassation courts, the legislator's approach to discretionary powers could change [20, p.10-61]. Note that at present, the courts of cassation have been created, therefore, the question of the expiration of the time allotted for emergency powers can be raised.

S.A. Khalatov reasonably notes that as a result of the procedural reform of 2018, the interested persons received judicial supervision as an extraordinary stage of the civil procedure, limited by a strict sequence of appeals, with the right to

file a supervisory complaint only against a judicial act of an instance that is only one step lower in the instance system. However, the powers of the officials of the Supreme Court remained protected from procedural reform [24, p.38-40].

In the normal instance consideration of the case (in the presence of full stages of the review of the case with the verification of judicial acts according to the criteria established in the law), there is no need to endow officials with such powers. Such powers do not have significant legal value, and the parties are given the opportunity to regard the dispute as unfinished [25, p.47-51].

Supervisory proceedings "from the Chairman of the Supreme Court of the Russian Federation", which replaces all other instance activities, cannot be approved.

#### 4. Conclusions

In the civil procedural law science, the "discretionary powers" of the Chairman of the Supreme Court are rarely written about. One gets the impression that the procedural community has simply resigned itself to the controversial norms, and the courts operate within the proposed circumstances. However, with a broader approach to the choice of topic, for example, from the point of view of the effectiveness of the system of reviewing judicial acts in general, it is more difficult to ignore the extraordinary powers of the Chairman of the Supreme Court. Inevitably, one has to make sure that his activities are non-procedural in nature, at best based on the rules of office work (instead of the law), selective and non-transparent.

In addition, the internal conflict of the judicial system associated with the voluntaristic liquidation of a successful Supreme Arbitration Court of the Russian Federation and the loss of part of the APC' norms, ensuring the functioning of effective cassation and supervisory instances, has not been eliminated. We believe that the approach of the authors of one of the latest educational and practical manuals on arbitration proceedings, which, in principle, did not include, in principle, sections on the second cassation proceedings and on supervisory proceedings (i.e. judicial acts "by chapters on appeal proceedings, proceedings in the cassation instance of district arbitration courts and revision on new and newly discovered circumstances [26]. One can only approve of such demonstrative disregard.

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