



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

Committee of Ministers  
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*Ministers' Deputies*

## **Information documents**

**CM/Inf/DH(2005)20** 23 March 2005

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### Supervisory review (nadzor) procedure in the Russian Federation: Prospects for reform in line with the ECHR requirements

Materials of the high-level seminar organised by the Directorate General of Human Rights (DG-II) in the context of the implementation of the European Court's judgment in *Ryabykh v. Russia* case, Strasbourg, 21-22 February 2005

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DIRECTORATE GENERAL OF HUMAN RIGHTS – DG II  
HUMAN RIGHTS CO-OPERATION AND AWARENESS DIVISION  
DEPARTMENT FOR THE EXECUTION OF THE JUDGMENTS  
OF THE EUROPEAN COURT OF HUMAN RIGHTS



## **Supervisory review (*nadzor*) procedure in the Russian Federation: Prospects for reform in line with the ECHR requirements**

**Seminar in Strasbourg, 21-22 February 2005**

### **BACKGROUND**

The idea to hold this seminar was submitted in the context of the Committee of Ministers' ongoing supervision of the execution by the Russian Federation of the European Court's judgment of 24 July 2003 in *Ryabykh* case. In this case, the Committee is presently examining the question of general measures necessary to prevent new violations similar to the one found by the Court.

The violation of the Convention in *Ryabykh* was due to the quashing by the Presidium of the Belgorod Regional Court in March 1999 of a final judicial decision in the applicant's favour, following an application for supervisory review (*nadzor*) lodged by the President of the same Court under then in force Articles 319 and 320 of the Code of Civil Procedure. The latter gave the President discretionary powers to challenge at any moment final court decisions. The European Court found that the using of the supervisory review by the Presidium infringed the principle of legal certainty and thus the applicant's right to a court (violation of Article 6§1 of the Convention).

Subsequent to these facts, the Russian Federation adopted some general measures with a view to remedying the systemic problem at the basis of the violation. According to the new Code of Civil Procedure (in force since 01/02/2003), the time period for lodging an application for supervisory review has been limited to one year (Article 376) and the list of state officials empowered to lodge such an application has been significantly narrowed (Article 377).

While these measures were welcomed by the Committee of Ministers, doubts were expressed as to whether the measures taken are sufficient to prevent new similar violations of the principle of legal certainty. The Russian authorities were thus invited to continue the reform of the supervisory review procedure, thus bringing it in line with the Convention's requirements, as highlighted, *inter alia*, by *Ryabykh* judgment.

Given the complexity of this issue and the ongoing reflection on this matter in Russian legal circles, it was suggested, at the Committee's 906th DH meeting (8-9 December 2004), to hold a high-level seminar involving representatives of the Russian supreme courts, executive, *Prokuratura* and advocacy with a view to taking stock of the current *nadzor* practice and to discussing prospects for further reform of this procedure in conformity with the Convention's requirements. As a result, the Directorate General of Human Rights (DG-II) has organized the present seminar in Strasbourg, in close cooperation with the Russian authorities.

The seminar folder contains the following documents, which have been selected to feed the discussions on the subject:

- The European Court's judgment in *Ryabykh v. Russia* (24 July 2003)<sup>1</sup>, as well as the judgments dealing with similar issues in cases concerning Russia or other countries: *Brumarescu v. Romania* (28 October 1999), *Sovtransavto Holding v. Ukraine* (25 July 2002) and *Nikitin v. Russia* (20 July 2004);
- The European Court's admissibility decisions in 4 cases dealing with questions relating to the using of the supervisory review procedure under its former and current form in civil, criminal and commercial matters: *Tumilovich v. Russia* (22 June 1999), *Uralmash v. Russia* (4 September 2003), *Berdzenishvili v. Russia* (29 January 2004) and *Denisov v. Russia* (6 May 2004)<sup>2</sup>;
- The article "*La place de la notion de sécurité juridique dans la jurisprudence de la Cour européenne des Droits de l'homme*" by Michele DE SALVIA, Jurisconsult of the European Court of Human Rights (*Les Cahiers du Conseil constitutionnel*, n° 11, 2001) ;
- A general introduction on the Committee of Ministers' supervision of the execution of the judgments of the European Court of Human Rights (Article 46 of the Convention).

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<sup>1</sup> The Russian translation of this judgment was kindly provided by the Information and Documentation Office of the Council of Europe in Moscow.

<sup>2</sup> The Russian translation of these decisions was kindly provided by the Office of the Representative of the Russian Federation to the European Court of Human Rights.

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**SEMINAR**  
**on**

**Supervisory review (*nadzor*) procedure in the Russian Federation:  
Prospects for reform in line with the ECHR requirements**

**Strasbourg, 21-22 February 2005**

**Room 20 RC ILL (ground floor, river side)  
Human Rights Building**

**PROGRAMME**

Organised by the  
Directorate General of Human Rights – DG II

Monday 21 February 2005

### Morning session

- Chair: Günter NAGEL, Head of the Department for the execution of the European Court's judgments (DG-II)
- 10.00 Opening of the seminar
- 10.05 – 10.25 Welcome and Introductory Speeches by Pierre-Henri IMBERT, Director General of Human Rights (DG-II) and Mr Pavel LAPTEV, Representative of the Russian Federation at the European Court of Human Rights
- 10.25 – 10.50 Supervisory review in ordinary courts Vladimir RADCHENKO, the First Deputy President of the Supreme Court of the Russian Federation
- 10.50 – 11.20 The legal certainty requirement under the ECHR: An overview of the European Court's case-law Michele DE SALVIA, Jurisconsult of the European Court of Human Rights
- 11.20 – 11.40 Questions
- 11.40 – 12.00 Coffee break
- 12.00 – 12.25 Supervisory review in commercial courts Anton IVANOV, President of the Supreme Arbitration Court of the Russian Federation
- 12.25 – 13.00 Questions
- 13.00 – 14.45 Lunch

### Afternoon session

- Chair: Jeroen SCHOKKENBROEK, Head of Human Rights Intergovernmental Programmes Department (DG-II)
- 14.45 – 15.10 Supervisory review: Current role of *Prokuratura*, Sabir KEKHLEROV, Deputy Prosecutor General of the Russian Federation
- 15.10 – 15.35 Supervisory review in Russia: views of the Russian advocacy Evgeny SEMENYAKO, President of the Federal Russian Bar Association
- 15.35 – 16.00 Questions
- 16.00 – 17.00 Discussion: Issues which the current procedure of supervisory review raises under the ECHR requirements
- 17.00 Closure of the first day

Tuesday 22 February 2005

**Morning session**

Chair:	Fredrik SUNDBERG, Principal Administrator, Department for the execution of the European Court's judgments (DG-II)
10.00	Opening of the second day
10.00 – 11.15	Discussion: Bringing the supervisory review procedure in line with the ECHR requirements
11.15 – 11.45	Coffee break
11.45 – 12.30	Discussion (continued): Bringing the supervisory review procedure in line with the ECHR requirements
12.30 – 13.00	Concluding remarks. Adoption of the conclusions of the seminar
13.00	Closure of the seminar

**Simultaneous interpretation will be ensured as follows:  
21 February (morning) – English, French and Russian;  
21 February (afternoon) and 22 February (morning) – English and Russian**

## LIST OF PARTICIPANTS

### **Delegation from the Russian Federation:**

Pavel LAPTEV, Representative of the Russian Federation at the European Court of Human Rights

Anton IVANOV, President of the Supreme Arbitration Court of the Russian Federation

Veniamin YAKOVLEV, Adviser to the President of the Russian Federation

Yury BERESTNEV, Director of the Department, State Legal Directorate of the President of the Russian Federation

Vladimir RADCHENKO, First Deputy President of the Supreme Court of the Russian Federation

Alexander FEDIN, President of the Cassational Chamber of the Supreme Court of the Russian Federation

Sabir KEKHLEROV, Deputy Prosecutor General of the Russian Federation

Tatiana ANDREEVA, Judge of the Supreme Arbitration Court of the Russian Federation

Mikhail VINOGRADOV, Lawyer, State Legal Directorate of the President of the Russian Federation

Vitaly PORTNOV, Presidential Council for the Efficiency of Justice of the Russian Federation

Evgeny SEMENYAKO, President of the Federal Bar Chamber of the Russian Federation

Yury PILIPENKO, Head of the Administration of the Federal Bar Chamber of the Russian Federation

Galina NILUS, Lawyer, Moscow Regional Bar Association

### **Permanent Representation of the Russian Federation to the Council of Europe**

Alexandre ORLOV, Permanent Representative of the Russian Federation to the Council of Europe

Maria MOLODSOVA, Deputy to the Permanent Representative of the Russian Federation to the Council of Europe

### **Directorate General of Legal Affairs (DG-I)**

Alexey KOJEMIAKOV, Head of Private Law Department

Arkadi SYTINE, Adviser for Legal Cooperation Programmes for the Russian Federation

**Directorate General of Human Rights - DG-II**

Pierre-Henri IMBERT, Director General of Human Rights

Günter NAGEL, Head of Department for the Execution of the European Court's Judgments

Jeroen SCHOKKENBROEK, Head of Human Rights Intergovernmental Programmes Department

Fredrik SUNDBERG, Principal Administrator, Department for the Execution of the European Court's Judgments

Mikhail LOBOV, Administrator, Department for the Execution of the European Court's Judgments

Kristina PENCHEVA, Programme Adviser, Human Rights Co-operation and Awareness Division

Viktor BAIESU, Lawyer, Department for the Execution of the European Court's Judgments

**European Court of Human Rights:**

Anatoly KOVLER, Judge of the European Court of Human Rights

Michele DE SALVIA, Jurisconsult of the European Court of Human Rights

Lawrence EARLY, Deputy Grand Chamber Registrar

Stan NAISMITH, Deputy Section Registrar



## **Supervisory review (nadzor) procedure in the Russian Federation: Prospects for reform in line with ECHR requirements**

*Seminar in Strasbourg, 21 and 22 February 2005*

Draft introductory speech by Pierre-Henri IMBERT,  
Director General of Human Rights (DG-II)

“Mr Chairman,  
Ladies and Gentlemen,

First of all, on behalf of the Directorate General of Human Rights, I would like to welcome all the participants in this seminar, in particular the delegation of senior Russian judges and lawyers, who have come to Strasbourg to discuss one of the key aspects of judicial reform in Russia. I am pleased to see the judge elected to the European Court of Human Rights in respect of the Russian Federation and the Russian representatives to the Ministers' Deputies who have special responsibility for monitoring the execution of the Court's judgments.

I would like to assure you that I am here to welcome you today not only because protocol requires me to do so but because of my personal interest in this meeting. However, I do not intend to take up too much of your time and I will do no more than share some thoughts with you in the hope that they might make a useful contribution to your discussions.

To begin with, I would like to point out that this seminar was proposed in the context of the Committee of Ministers' ongoing supervision of the execution of a judgment handed down by the European Court of Human Rights (*Ryabykh v. Russia*). In this judgment the Court held that there had been a violation of the right to a fair trial owing to the fact that the Russian judicial authorities had reviewed a number of final decisions in civil proceedings (the well-known *nadzor* procedure).

As you know, when executing a judgment handed down by the Court, the respondent state must, among other things, take general measures to prevent new violations similar to that found by the Court. That is why the Committee of Ministers has examined the reforms so far introduced in Russia to limit the risk of such violations. It concluded that further reforms were advisable and even necessary, something which the Russian delegation did not contest. Given the complexity of this issue and the extent to which the *nadzor* procedure is being used in Russia, it was suggested that a seminar should be held to exchange views on how Russia might meet its obligations, in other words prevent further violations caused by arbitrary and dubious challenges to the binding nature of a final judgment.

I wish to point out that this is the first time a seminar has been held in the context of the execution by Russia of a judgment handed down by the Court. The setting and the audience seem to me to have been particularly well chosen and I trust that our discussions will be fruitful.

As you know the European Convention on Human Rights is a unique collective undertaking. All those concerned by this particular case are gathered here today in this room: members of the Russian government, public prosecutors and national judges, the judges at the European Court of Human Rights and government representatives on the Committee of Ministers; all the links in the chain that should ensure the efficiency of justice. However, to achieve this undertaking, there must be dialogue between the different parts of the chain because dialogue provides the opportunity to consider sensitive and complex issues like the subject of our seminar, in a spirit of mutual understanding and co-operation. More generally, this dialogue helps to foster a more constructive attitude to the Strasbourg judgments, by showing that they do not constitute an unacceptable interference in national legal practice but an element for consideration and, finally, a step towards a more efficient modern state that upholds fundamental human rights.

We cannot overstress the fact that, quite apart from our common values, states have a mutual interest in the application of the Convention. National judges, in particular, find it relevant since the Convention reinforces their power and authority vis-à-vis other branches of the state. Several cases decided in Strasbourg, including Russian cases, have shown that any disregard for the judicial authorities – whether infringements of its independence or failure to execute its decisions – is systematically condemned by the European Court.

Nevertheless, this power and authority obviously also entail a heavy responsibility for judges: that of ensuring that justice is effectively and consistently applied. This is not an easy task, particularly given the size of a state like Russia. This argument is often used to justify the *nadzor* procedure, which allegedly helps prevent disparities in the national judicial system and redress the errors made by some courts. One question must, however, be raised: is it really impossible to find a procedure which meets this – obviously essential – requirement, while continuing to comply with the Convention's requirement of legal security? I am convinced that there are various possible solutions and I believe that such possibilities are already being discussed in Russia. Our Russian colleagues also know that the experience acquired by the Council of Europe can make a major contribution to these discussions.

For the time being, however, this seminar has three aims: to take stock of the *nadzor* procedures currently being used in various spheres of Russian law; to try to identify the problems that these procedures and practices raise under the Convention, in particular in respect of the requirement of legal security, and, last but not least, to consider different ways and means of reforming these procedures.

I would like to thank you for your attention and to wish you much success”

## **Supervisory review (*nadzor*) procedure in the Russian Federation: Prospects for reform in line with the ECHR requirements**

**Seminar in Strasbourg, 21-22 February 2005**

### **CONCLUSIONS**

1. All participants express satisfaction at the organising of a high level seminar with participation of the Russian highest judiciary, *prokuratura*, executive authorities and advocacy to discuss the prospects for further reforms of the supervisory review procedure, one of the topics at the heart of the Russian judicial reform. This dialogue between the main actors of the Russian legal system and their interlocutors from the Council of Europe has proved to be a fruitful exercise conducted in an appropriate format.
2. The participants welcome the reforms of the supervisory review procedure adopted by the Russian Federation through the adoption of the new Codes of Criminal, Commercial (Arbitration) and Civil Procedure (in force respectively since 1 July 2002, 1 January 2003 and 1 February 2003). It was notably suggested by many participants that the supervisory review in its present form is closer to respect the legal certainty principle enshrined in the Convention, especially in criminal and commercial matters. The importance of some new safeguards introduced has in particular been emphasised: in criminal proceedings, the supervisory review could only be requested in the accused person's favour (Article 405 of the CCrimP); in commercial (arbitration) proceedings, the *nadzor* proceedings may be taken on some rather limited grounds and within three month' time-limit (Article 304 of the CComP). In addition, systematic consideration of all *nadzor* applications by three-judge committees of the Higher Commercial (Arbitration) Court better reflects the proceedings' judicial nature and better prevents arbitrariness. Legal clarification of the provisional nature of the enforcement of judicial decisions pending the *nadzor* procedure may be useful to avoid parties' unreserved reliance on binding and enforceable decisions, which could subsequently be quashed in *nadzor* procedure.
3. More reservations have, however, been expressed, from the Convention viewpoint, as to the existing supervisory review procedure in civil matters. Indeed, the time-limit for supervisory review is longer (1 year for application plus uncertain length of the proceedings themselves) and the grounds for such review are much wider (any substantial violation of material or procedural law – Article 387 of the new CCivP). Unlike the commercial proceedings, the supervisory review function is entrusted not only to the Supreme Court but also to regional courts. Progressively limiting the time-limit and grounds for *nadzor* application may thus be an avenue for preventing new violations of the legal certainty requirement enshrined in the Convention. Other avenues also need to be explored.
4. The success of the reform of the *nadzor* procedure in civil matters is, however, contingent on parallel measures improving the quality of judicial decisions taken by first instance and cassation courts: the main objective would therefore be to give these courts sufficient means to better perform their duties so as to limit the need for subsequent supervisory review correcting judicial errors. This may include better material support, more realistic procedural time-limits and other requirements and better professional training of lower judges. The Council of Europe has consistently expressed readiness in assisting the Russian authorities in this last mentioned respect. It may indeed be noted that, in all efficient legal systems, judicial errors can and should primarily be addressed through ordinary appeal and cassation proceedings. In civil proceedings, parties also have a certain responsibility to detect such errors and challenge them before a higher judicial instance as appropriate.
5. In assessing the reforms necessary it was clear that close attention had to be paid to the developing jurisprudence of the ECHR.
6. The conclusions of the seminar will be reported to competent Russian authorities with a view to contributing to their reflection on possible further reforms of the *nadzor* procedure. The Committee of Ministers will be also informed of the seminar in the context of its supervision of the execution of the European Court's judgment in *Riabykh* case.