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The amendments to the system of judicial decisions' review in Russian courts of civil jurisdiction.

The European Court of Human Rights in its judgments has repeatedly showed a critical attitude towards the current Russian system of judicial decisions' review (e.g. *Tumilovich v. Russia*, *Ryabykh v. Russia*).

According to Article 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms the Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken. Thus, it is important what is meant by “the final decision”. The system of Russian courts, being an inheritance of soviet regime, consists of 5 successive instances: first instance, second instance and 3 supervisory instances. The European Court of Human Rights determined that the decision of the second instance is to be considered an exhaustion of domestic remedies. Thereby the Soviet type of supervisory review was not acknowledged as an effective remedy.

Since the first judgment where the decision had been taken against Russia (*Tumilovich case*, 1999) the legislative tried to find an acceptable system of decisions' review, the one that would be recognized as an effective domestic remedy. The last amendments to the Code of Civil Procedure of Russian Federation (coming into force on 01.01.2012) are among these measures.

In order to comprehend the essence of the new rules the following should be taken into consideration.

The system of courts of civil jurisdiction in Russia consists of two autonomous systems, the structure, character of procedure, quantity of instances, technic equipment and others characteristics of which are different.

COMPARATIVE TABLE

<u>Commercial Courts (1992)</u>	<u>Courts of general jurisdiction (1964)</u>
1. Regional court (1 instance)	1. Justice of peace (1 instance)
2. Court of appeal (2 instance)	2. District court (1 and 2 instance)
3. Court of cassation (3)	3. Regional court (1, 2, 3)
4. Supreme Commercial Court (final review)	4. Supreme Court (1, 2, 3)

It's clear from this list, that the system of Commercial courts is based on specialization of each of its sections (some exceptions in court of cassation and Supreme Commercial Court do not affect the general rules). As contrasted to this, every court of general jurisdiction (except for the Justice of peace) carries out functions of different instances. It determines complicated and quite ineffective system of judicial decisions' review.

The reason of such essential differences is historical. The system of courts of general jurisdiction originates in Soviet Union. A considerable part of rules in the Code of Civil Procedure of 2002 are "soviet" as well. The rules that allow a court of any level to act as a court of first instance are among them. These rules either influence on the current system of judicial decisions' review.

The system of Commercial courts on the contrary has been created in post-soviet epoch, at the beginning of the 1990-s, in the period of democratization of Russian society. The achievements of law science, the experience of developed states were taken into account while building this system. Despite that, Commercial courts have been created for entrepreneurial and economic cases only, while the main problems were connected with the system of courts of general jurisdiction.

Therefore, Russian legislative is under an obligation to create such a system of decisions' review that can be called an effective domestic remedy. This result is very important to Russia, because it will allow cutting down the quantity of applications from Russian citizens to the European Court of Human Rights.

On the other hand, during a long period (from the beginning of 2000-s) we can see an obvious tendency of “cosmetic” changes in procedural law, with main purpose – to save the essential of the system of decisions’ review. As was mentioned above, the system of courts of general jurisdiction consists of four levels, and the court of any level has an opportunity to act as the 1-st instance. The legislative does not abrogate the rules of hierarchic jurisdiction as the base of current review rules.

How superficial and inessential the “changes” to the Code of Civil Procedure are, can be demonstrated by the comparative table provided below.

Review System in Russia

Now			After 01/01/2012		
type	bodies	objects	type	bodies	objects
<i>ordinal</i>	appeal	1. district court - Justice of peace decisions	<i>ordinal</i>	appeal	1. district court - Justice of peace decisions
	cassation	2. regional court - district court decisions		cassation	2. regional court - district court decisions
		3. Court's Board of Supreme Court - regional courts decisions			3. Court's Board of Supreme Court - regional courts decisions
		4. Cassation Board of Supreme Court - Supreme Court's decisions			4. Appeal Board of Supreme Court - Supreme Court decisions
<i>extra ordinal</i>	Supervisory review	5. Presidium of regional court - cassation decisions of regional courts - appeal decisions of district courts - Justice of peace and district court decisions	<i>extra ordinal</i>	cassation	5. Presidium of regional court - appeal decisions of regional courts - appeal decisions of district courts - Justice of peace and district court decisions
		6. Court's Board of Supreme Court - decisions of Presidium of regional court - cassation decisions of regional court - district court decisions			6. Court's Board of Supreme Court - decisions of Presidium of regional court - appeal decisions of regional court - district court decisions
		7. Presidium of SC - regional court decisions - Supreme Court decisions - Cassation Board of Supreme Court decisions - Court's Board of Supreme Court cassation decisions - Court's Board of Supreme Court supervisory decisions		Supervisory review	7. Presidium of SC - regional courts decisions - Supreme Court decisions - Appeal Board of Supreme Court decisions - appeal decisions of Court's Board of Supreme Court - Court's Board of Supreme Court cassation decisions
		8. Presidium of SC - any decision by application of Supreme Court President			8. Presidium of SC - any decision by application of Supreme Court President