



## Cassation appeal procedure in civil cases in Russia constitutes a remedy to be exhausted before bringing a case before the Strasbourg court

In its decision in the case of [Abramyan and Others v. Russia](#) (application nos. 38951/13 and 59611/13) the European Court of Human Rights (ECtHR) has unanimously declared the applications inadmissible. The decision is final.

The ECtHR examined for the first time the cassation procedure before presidia of regional courts and the Supreme Court in civil cases introduced by a reform to the Russian Code of Civil Procedure (Law no. 353-FZ) which entered into force on 1 January 2012.

The ECtHR concluded that this procedure had to be exhausted by a person intending to lodge a complaint about an alleged violation of his or her Convention rights before it. The recognition of the cassation procedure as a remedy to be exhausted will give the Russian Supreme Court an adequate opportunity to consider a complaint about an alleged violation of the Convention in civil cases and remedy any such violation before examination by the European Court of Human Rights. The ECtHR considers that the new approach will strengthen the dialogue between the Russian judicial system and the Convention institutions, thus giving full effect to the subsidiarity principle.

As regards the applicants' complaints, the ECtHR agreed with the Russian Government that the final decision at national level in their case had been a decision of a single judge of the Russian Supreme Court of 5 October 2012, adopted more than six months before they lodged their applications with the ECtHR. The applications had thus been lodged out of time and had to be rejected under Article 35 (admissibility criteria) of the European Convention on Human Rights.

The applicants complained about the court-ordered demolition of their boathouses in Sochi (Russia) and the quashing of a binding judgment in their favour.

### Principal facts

The applicants, Robert Abramyan, Sergey and Alexey Yakubovskiye, are Russian nationals who were born in 1958, 1988, and 1979 respectively and live in Sochi (Russia)

The case concerned the court-ordered demolition of their boathouses in Sochi. All applicants are members of the cooperative "*Maliy Akhun*", which was created in 1991 in order to build and subsequently use boathouses on a plot of land along the coastline of Maliy Akhun Black Sea Resort.

Although the Municipality of Sochi issued the necessary authorisations and approved the construction of boathouses from 1993 to 1998, it sued the applicants in 2012, arguing that before 2010 the Municipality was not the real owner of the land and consequently the applicants' constructions should be declared unauthorised and demolished.

In March 2012 the first-instance court found for the Sochi Municipality. It also referred to an instruction by the Russian President of 30 August 2010 and noted that the Cooperative's constructions were damaging the town's external image as host city of the 2014 Winter Olympics.

That judgment was quashed on appeal in July 2012 on the ground that evidence had been ignored proving that the use of the land in question and the construction of the boathouses had been duly authorised by the local authorities. Under Russian law, this decision was deemed to be final.

However, the applicants then lost their case in first cassation at regional level. They tried to lodge a second cassation appeal with the Supreme Court but it was dismissed by a single judge of that court,

who on 5 October 2012 refused to refer their appeal to the Civil Chamber of that Court. The Deputy President of the Supreme Court ultimately confirmed this dismissal decision on 27 December 2012.

The applicants' boathouses were demolished in March 2013.

## Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights (ECtHR) on 5 June 2013 and 21 April 2013 respectively.

Relying on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property), the applicants complained that the quashing of the binding judgment delivered on appeal in July 2012 in their favour breached the principle of legal certainty.

The decision was given by a Chamber of seven, composed as follows:

Isabelle Berro (Monaco), *President*,  
Julia Laffranque (Estonia),  
Paulo Pinto de Albuquerque (Portugal),  
Linos-Alexandre Sicilianos (Greece),  
Erik Møse (Norway),  
Ksenija Turković (Croatia),  
Dmitry Dedov (Russia), *Judges*,

and also Søren Nielsen, *Section Registrar*.

## Decision of the Court

### Article 6 – admissibility of the complaints

The ECtHR had to consider the Russian Government's argument that the applications should be declared inadmissible and be rejected under Article 35 (admissibility criteria) of the Convention, since they had been lodged outside the six-month time-limit and since the applicants had failed to exhaust all effective domestic remedies available to them.

As regards the first point, the ECtHR noted that the applicants had lodged their applications on 21 April and 5 June 2013, respectively, that is, more than six months after the dismissal of their cassation appeal by a single judge of the Supreme Court on 5 October 2012 and less than six months after the dismissal decision was upheld by the Deputy President of the Supreme Court on 27 December 2012. The ECtHR thus had to determine on which date the final decision had been taken in the case for the purpose of the six-month time-limit. The Russian Government argued that the final decision had been the decision of the single judge of the Supreme Court of 5 October 2012.

In previous cases against Russia the ECtHR had consistently held that a decision taken by a second-instance court at regional level under the former cassation procedure in Russia was a final national decision for the purposes of Article 35. Accordingly, that decision had so far been considered as the starting-point for the calculation of the six-month time-limit. Supervisory-review applications to higher courts of general jurisdiction – namely, the presidia of the regional courts, the Civil Chamber of the Supreme Court and the Presidium of that court, and decisions taken by them on supervisory review – had not been considered relevant for the purposes of calculation of that time-limit.

However, the cassation appeal in the applicants' case had been exercised under a **new procedure introduced by a reform to the Code of Civil Procedure** – Law no. 353-FZ – which had entered into force on 1 January 2012. The applicants' case was the first opportunity for the ECtHR to assess whether that procedure was from now on a legal remedy at national level which had to be

exhausted and was therefore relevant for the calculation of the six-month time-limit. Under the amendment, the cassation appeal procedure was confined to the presidia of the regional courts and the Civil Chamber of the Supreme Court, which could examine the appeal after a single judge had examined its admissibility; the supervisory review procedure was limited to the Presidium of the Supreme Court.

After having examined several aspects of the new cassation procedure, the ECtHR found that it no longer had reason to consider that this procedure constituted an extraordinary means of reopening the judicial proceedings in a case. Instead it found that the new procedure was to be considered an ordinary appeal on points of law similar to that existing in the jurisdictions of other Convention States. Therefore, the ECtHR found it **justified to require a person intending to lodge a complaint about an alleged violation of his or her Convention rights to first use both cassation appeals under the new procedure.**

In reaching that conclusion, the ECtHR noted in particular that the reform limited the cassation procedure to only two levels of jurisdiction and provided for specific time-limits for each stage of the examination of the case within both cassation courts, thus removing the uncertainty caused by the previous supervisory review system. Moreover, the ECtHR was satisfied that the new cassation procedure allowed the parties to submit to the domestic authorities, including the Supreme Court, the substance of their Convention complaint and seek relief.

The ECtHR underlined that the recognition of the cassation procedure as a remedy to be exhausted will from now on allow potential applicants to first submit their grievances to the highest judicial body in Russia which will have an adequate opportunity to consider a complaint about an alleged violation of the Convention in civil cases and remedy any such violation before examination by the European Court of Human Rights.

The ECtHR stressed, however, that the effective functioning of the cassation system for the review of binding and enforceable judgments depended on strict compliance with the time-limits laid down in the Code of Civil Procedure and on effective access to the Supreme Court, which had to be available not only in theory but also in practice.

As regards the applicants' complaint with the Deputy President of the Supreme Court, which had been rejected on 27 December 2012, the ECtHR found that it had to be considered an extraordinary remedy which they were not required to exhaust for the purposes of Article 35. Under the ECtHR's case-law, a remedy which depended on an official's discretionary power and was not subject to any time-limit – as was the case with this complaint – was not a remedy to be exhausted.

Accordingly, the ECtHR agreed with the Russian Government that the final decision at national level in the applicants' case had been the decision of the judge of the Supreme Court of 5 October 2012, which was more than six months before they had lodged their applications with the ECtHR. The applications had thus been **lodged out of time and had to be rejected under Article 35.**

At the same time, the ECtHR **dismissed the Government's argument that the applicants had failed to exhaust the domestic remedies** since they could have lodged a supervisory review application with the Presidium of the Supreme Court. The ECtHR noted that such a review application could only be lodged by a party if his or her cassation appeal had previously been examined on the merits by the Civil Chamber of the Supreme Court. In the circumstances of the applicants' case, in which no examination on the merits by the Civil Chamber of the Supreme Court had taken place, such a supervisory review application was not a remedy accessible to them.

The ECtHR's findings concerning the admissibility of the complaints applied equally to the applicants' remaining complaints, in particular under Article 1 of Protocol No. 1.

*The decision is available only in English.*

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### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

**Nina Salomon (tel: + 33 3 90 21 49 79)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Denis Lambert (tel: + 33 3 90 21 41 09)

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