RULINGS OF THE PLENARY SESSIONS OF THE SUPREME COURT

of the Russian Federation

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Contents

Ruling of the Plenary Session of the Supreme Court of the Russian Federation of 24 February 2005 No. 3 Moscow "On Judicial Practice on Cases of Defence against Defamation of Character of Individuals and of the Business Reputation of Individuals and Legal Entities"

In accordance with Article 23 of the Constitution of the Russian Federation, every person has the right to defend its honour and good name. Article 29 of the Constitution of the Russian Federation guarantees every person freedom of thought and speech, as well as freedom of the media.

According to Part 4 of Article 15 of the Constitution of the Russian Federation, the generally recognised principles and rules of international law and international treaties of the Russian Federation constitute an integral part of its legal system. Freedom of the media on the territory of the Russian Federation is covered by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in accordance with Part 1 of which every person has the right to express his opinion freely. This right includes the freedom to support one's opinion, receive and distribute information and ideas without any interference on the part of the public authorities and irrespective of state borders.

At the same time, Part 2 of Article 10 of the given Convention states that exercise of these freedoms, which impose obligations and responsibility, may be fraught with certain formalities, conditions, restrictions or sanctions envisaged by law and necessary in a democratic society in the interests of national security, territorial integrity or public law and order, for the purposes of preventing disorders or crimes, for protecting health and morality, defending the reputation or rights of other persons, preventing disclosure of information received in confidence, or ensuring the authority and impartiality of justice. Whereat the provisions of the given rule should be interpreted in accordance with the legal position of the European Court of Human Rights, as expressed in its judgments.

Every person's right, envisaged by Articles 23 and 46 of the Constitution of the Russian Federation, to defend their honour and good name, as well as every person's right established by Article 152 of the Civil Code of the Russian Federation to judicial protection of their honour, dignity and business reputation against distributed information that does not comply with reality and that is defamatory, constitutes a necessary restriction on freedom of speech and the media for cases of abuse of these rights.

Having discussed the materials of the analysis conducted of judicial practice in relation to cases of defence of honour, dignity and business reputation, the Plenary Session of the Supreme Court of the Russian Federation notes that courts of Russia in general consider cases of the given category correctly, in observance of the requirements envisaged by Article 152 of the Civil Code of the Russian Federation. At the same time, in connection with ratification by the Russian Federation of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, questions requiring answers have arisen in judicial practice.

Considering this, for the purposes of ensuring a correct and unified enforcement of the legislation regulating the given legal relations, the Plenary Session of the Supreme Court of the Russian Federation resolves to issue courts the following clarifications:

1. To draw the attention of the courts to the fact that the right of individuals to protection of their honour, dignity and business reputation is their constitutional right and the business reputation of legal entities – one of the conditions for their successful business.

By virtue of Article 17 of the Constitution of the Russian Federation, the human and civil rights and freedoms are recognised and guaranteed in the Russian Federation in accordance with the generally recognised principles and rules of international law and the Constitution of the Russian Federation. Whereat, exercise of human and civil rights and freedoms should not violate the rights and freedoms of other persons.

Bearing in mind these constitutional provisions, when resolving disputes relating to protection of honour, dignity and business reputation, courts should ensure a balance of the individual's right to protection of honour and dignity, as well as business reputation, on the one hand, and other rights and freedoms guaranteed by the Constitution of the Russian Federation: freedom of thought, speech, the media, the right freely to seek, receive, transfer, produce and disseminate information by any lawful means, the right to privacy, personal and family secrecy, the right to address state and municipal bodies (Articles 23, 29 and 33 of the Constitution of the Russian Federation), on the other.

On cases of the given category, account should be taken of the clarifications provided by the Plenary Session of the Supreme Court of the Russian Federation in its rulings of 31 October 1995 No. 8 "On Certain Issues of Application by the Courts of the Constitution of the Russian Federation in

Administering Justice" and of 10 October 2003 No. 5 "On Application by Courts of General Jurisdiction of the Generally Accepted Principles and Rules of International Law and of International Treaties of the Russian Federation".

When resolving disputes relating to protection of honour, dignity and business reputation, courts should be governed not only by the rules of the Russian legislation (Article 152 of the Civil Code of the Russian Federation), but also by virtue of Article 1 of Federal Law dated 30 March 1998 No. 54-FZ "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols Thereto", take into account the legal position of the European Court of Human Rights expressed in its judgments and concerning issues of interpretation and application of the given Convention (above all of Article 10), bearing in mind, at the same time, that the concept of defamation used by the European Court of Human Rights in its judgments is equivalent to the concept of not distributing information that does not comply with reality and is defamatory, as defined in Article 152 of the Civil Code of the Russian Federation.

2. Claims on cases of this category may be filed by both individuals and legal entities that consider that information that is both incorrect and defamatory has been distributed.

In accordance with Part 1 and 3 of Article 52 of the Civil Procedure Code of the Russian Federation, when such information is distributed in relation to minors or legally incompetent persons, claims to protect their honour and dignity may be filed by their legal representatives. At the request of interested persons (such as relations or heirs), the individual's honour and dignity may be protected even after their death (Part 1 of Article 152 of the Civil Code of the Russian Federation).

Judicial protection of the honour, dignity and business reputation of a person in relation to which incorrect and defamatory information has been distributed is not excluded even when it is not possible to determine who distributed such information (for example, if anonymous letters are sent to individuals and organisation or information is posted on the Internet by a person who cannot be identified). In accordance with Part 6 of Article 152 of the Civil Code of the Russian Federation, in the given case, the court is entitled, at the request of an interested party, to recognise the information distributed in relation thereto as being incorrect and defamatory. Such an application is considered in

the manner of special proceedings (Subsection IV of the Civil Procedure Code of the Russian Federation).

3. Provision 5, Part 1 of Article 33 of the Arbitration Procedure Code of the Russian Federation establishes special jurisdiction of state arbitration courts over cases relating to protection of business reputation in the sphere of entrepreneurial and other economic activities. Whereat, in accordance with Part 2 of the given article, such cases are considered by state arbitration courts irrespective of whether the participants in the legal relations from which the dispute or claim derived are legal entities, individual entrepreneurs or other organisations and individuals. Proceeding from this, cases on protection of business reputation in the sphere of entrepreneurial and other economic activities are not subject to courts of general jurisdiction.

If the parties to a dispute over protection of business reputation are legal entities or individual entrepreneurs in another sphere not relating to entrepreneurial or other economic activities, such a dispute is heard by a general jurisdiction court.

4. In accordance with Part 1 and 7 of Article 152 of the Civil Code of the Russian Federation, a court claim may be filed by an individual for information defaming his honour, dignity or business reputation to be refuted and by a legal entity for the same with respect to information defaming its business reputation. Whereat, the law does not provide for mandatory filing of such a claim against a defendant, including when the claim is entered against the editorial board of a media outlet that distributed the given information. At the same time, an individual is entitled to claim refutation of such information directly from the editorial board of the relevant media and a refusal to do so or violation of the refutation procedure established by law may be appealed in court (Articles 43 and 45 of the Law of the Russian Federation “On the Media”).

An individual in relation to which information has been published in the media that infringes on his rights or legitimate interests, as well as a legal entity, if the published details are defamatory to its business reputation, has the right to publish a response in the same media (Part 3 and 7 of Article 152 of the Civil Code of the Russian Federation, Article 46 of the Law of the Russian Federation “On the Media”).

5. The proper defendants in cases for protection of honour, dignity and business reputation are the authors of the incorrect and defamatory information and the persons that disseminated this information.

If the disputed information was published in the media, the proper defendants are the relevant author and media editorial board. If this information was distributed in the media stating its source, then the said person is also a proper defendant. If incorrect and defamatory information is published or otherwise distributed without the author's name being given (for example, in an editorial), the proper defendant on the case is the relevant media editorial board, i.e., the organisation, individual or group of individuals producing and issuing the given media (Part 9 of Article 2 of the Law of the Russian Federation "On the Media"). If the media editorial board is not a legal entity, the founder of the given media may be involved in the case as a defendant.

If the claimant files claims against one of the proper defendants that jointly distributed the incorrect and defamatory information, the court is entitled to summon a co-defendant to participate in the case only if it is impossible to hear the case in its absence (Article 40 of the Civil Procedure Code of the Russian Federation).

When the information was disseminated by an employee in connection with fulfilment of his professional activities on behalf of the organisation for which he works (for example, in a character certificate), the proper defendant in accordance with Article 1068 of the Civil Code of the Russian Federation is the legal entity whose employee distributed such information. Since consideration of the given case might affect the worker's rights and obligations, he may join the case as a third party not filing any independent claims in relation to the subject of the dispute on the side of the defendant or may be summoned to participate in the case on the initiative of the court or by petition of the participants in the case (Article 43 of the Civil Procedure Code of the Russian Federation).

6. If the actions of the persons that distributed the incorrect and defamatory information bear indicia of a crime specified by Article 129 of the Criminal Code of the Russian Federation (slander), the victim is entitled to apply to court c for the perpetrator to be held criminally liable and to file a claim for protection of their honour and dignity or business reputation in the manner of civil proceedings.

A refusal to initiate a criminal case under Article 129 of the Criminal Code of the Russian Federation, termination of a criminal case or handing down of a verdict does not exclude the possibility of a claim being filed for protection of honour and dignity or business reputation in the manner of civil proceedings.

7. With respect to cases of the given category, it should be borne in mind that the circumstances that, by virtue of Article 152 of the Civil Code of the Russian Federation, are of significance to the case and should be determined by the judges in order to accept the statement of claim and prepare the case for hearing, as well as during the litigation, are as follows: the fact of distribution by the defendant of information about the claimant, the defamatory nature of this information and its failure to comply with reality. In the absence of even one of the given circumstances, the claim may not be satisfied by the court.

Distribution of information defaming the honour and dignity of individuals or the business reputation of individuals and legal entities should be understood to mean publication of such information in the press, its broadcast by radio and television, demonstration in newsreel programmes and other media, distribution on the Internet, as well as by other means of telecommunications, inclusion in character certificates, public speeches, announcements addressed to officials, or announcement in any, including verbal, form to at least one person. Provision of such information to the person it concerns may not be recognised as distribution thereof if the person providing the given information takes sufficient confidentiality measures to prevent the information becoming known to third parties.

Courts should bear in mind that, if incorrect and defamatory information is posted on the Internet on an information resource registered in the manner established by law as media, when considering a claim for protection of honour, dignity and business reputation, they should be governed by the rules relating to the media.

Information that does not comply with reality consists of assertions with respect to facts and events that did not actually take place at the time to which the disputed information relates. Information contained in court rulings and sentences, resolutions of preliminary investigation agencies and other procedural or other official documents for appeal against or dispute of which a different judicial procedure is envisaged by law may not be regarded as incorrect (for example, information set forth in

a dismissal order may not be refuted in the manner of Article 152 of the Civil Code of the Russian Federation, since such an order may be disputed only as provided for in the Labour Code of the Russian Federation).

In particular, information is defamatory if it contains assertions to the effect that an individual or legal entity has broken the effective law, committed a dishonest act, behaved in an incorrect, unethical way in private, public or political life, acted in bad faith in performance of production, commercial or entrepreneurial activities, breached business ethics or customs, thereby denigrating the honour and dignity of an individual or the business reputation of an individual or legal entity.

8. Courts should distinguish cases on protection of honour, dignity and business reputation (Article 152 of the Civil Code of the Russian Federation) from cases on protection of the other intangible boons listed in Article 150 of this Code and violated in connection with distribution of information about an individual, inviolability of which is specially protected by the Constitution of the Russian Federation and other laws, and distribution of which might cause moral harm even if this information is correct and does not defame the honour, dignity or business reputation of the claimant.

In particular, when resolving disputes arising in connection with distribution of information on an individual's private life, account should be taken of the fact that, if correct information was distributed about the claimant's private life without his consent or that of its legal representatives, the defendant may be required to pay moral damages for the harm caused by the distribution of such information (Articles 150 and 151 of the Civil Code of the Russian Federation). Exceptions are cases when the media distribute information about the private life of the claimant for the purposes of protecting public interests on the basis of Part 5 of Article 49 of the Law of the Russian Federation "On the Media". This rule corresponds to Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

If, however, incorrect and defamatory information is distributed about the private life of the claimant, the defendant may be obliged to refute this information and pay moral damages for the harm caused by distribution of such information, on the basis of Article 152 of the Civil Code of the Russian Federation.

9. By virtue of Part 1 of Article 152 of the Civil Code of the Russian Federation, the obligation to prove that distributed information is correct is borne by the defendant. The claimant is required to prove distribution of the information by the person against whom the claim is filed and the defamatory nature of this information.

At the same time, proceeding from Part 3 of the given article, if the media publish information about an individual that is correct but infringes on his rights and legally protected interests and there has been a refusal by the media editorial board to publish his response to the given publication, the claimant must prove that distribution of the information infringes on his rights and legally protected interests.

In accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 29 of the Constitution of the Russian Federation, which guarantee every person freedom of thought and speech, as well as freedom of the media, and the position of the European Court of Human Rights on consideration of cases of protection of honour, dignity and business reputation, courts should distinguish between assertion of fact that can be verified and value judgements, opinions, and convictions that are not subject to judicial protection in the manner of Article 152 of the Civil Code of the Russian Federation, since, being an expression of a subjective view or opinion of the defendant, they cannot be verified as complying with reality.

Courts should bear in mind that, in accordance with by Articles 3 and 4 the Declaration of freedom of political debate in the media, adopted on 12 February 2004 at the 872nd session of the Committee of Ministers of the Council of Europe, by endeavouring to secure public opinion, politicians thereby agree to become a subject of public political debate and criticism in the media. Public officials may be criticised in the media in relation to how they fulfil their duties, since this is necessary in order to ensure open and responsible exercise thereby of their powers.

A person that believes an expressed value judgement or opinion distributed in the media, affects his rights and legitimate interests may exercise the right granted by Part 3 of Article 152 of the Civil Code of the Russian Federation and Article 46 of the Law of the Russian Federation “On the Media” to make a response, commentary or reply in the same media for the purposes of substantiating the untenability of the distributed judgements and giving another evaluation thereof.

If a subject opinion is expressed insultingly, denigrating the honour, dignity and business reputation of the claimant, the defendant may be required to pay moral damages for the insult to the claimant (Article 130 of the Criminal Code of the Russian Federation, Articles 150 and 151 of the Civil Code of the Russian Federation).

10. Article 33 of the Constitution of the Russian Federation secures the right of individuals to make submissions to state and local government bodies, which are required, within their terms of reference, to consider such submissions, take a decision thereon and provide a reasoned response by the deadline set by law.

Courts should bear in mind that, when an individual makes a submission to the given bodies containing certain information (for example, to the law-enforcement agencies, notifying of an alleged, in his opinion, or committed crime or one under preparation), but this information is not confirmed by the investigation, the given circumstances may not, in itself, serve as grounds for imposing civil law liability on this person, as envisaged by Article 152 of the Civil Code of the Russian Federation. This is because, in the given case, the individual was exercising his constitutional rights to make a submission to bodies that, by virtue of law, are required to verify information received, but not distribution of incorrect and defamatory information.

Such claims may be satisfied only if, during consideration of the case, the court establishes that there were no grounds for the submission made to the authorities and that it was prompted not by an intention to fulfil one's civil duty or protect rights or a legally protected interests, but exclusively to cause harm to the other person, i.e., constituted an abuse of rights (Part 1 and 2 of Article 10 of the Civil Code of the Russian Federation).

11. Courts should bear in mind that, when information with respect to which a dispute has arisen is provided during consideration of another case by the participants therein, as well as witnesses in relation to case participants, constituted evidence on this case and was assessed by the court when delivering its ruling, it may not be disputed in the manner envisaged by Article 152 of the Civil Code of the Russian Federation, since the rules of the Civil Procedure Code of the Russian Federation and of the Criminal Procedure Code of the Russian Federation establish a special procedure for investigating

and assessing such evidence. In essence, such a claim is for repeated judicial assessment of this information, including reassessment of evidence on previously considered cases

If, however, such information is distributed during consideration of a case by the above persons in relation to other persons not participating in the judicial proceedings, if these persons consider such information to be untrue and defamatory, they may protect their rights in the manner envisaged by Article 152 of the Civil Code of the Russian Federation.

12. To draw the attention of courts to the fact that the list contained in Article 57 of the Law of the Russian Federation "On the Media" of cases of release from liability for distributing untrue, defamatory information is exhaustive and not subject to expansive interpretation. For instance, a reference by media representatives to the publication being of an advertising nature does not serve as grounds for release from liability. By virtue of Article 36 of the Law of the Russian Federation "On the Media" advertising is distributed in the media in the manner established by the legislation of the Russian Federation on advertising. According to Part 1 of Article 1 of Federal Law dated 18 July 1995 No. 108-FZ "On Advertising", one of its purposes is to prevent and put a stop to unfair advertising that could be detrimental to the honour, dignity or business reputation of individuals. Proceeding from this, if the advertising material contains incorrect and defamatory information, on the basis of Article 152 of the Civil Code of the Russian Federation, both individuals and organisations providing such information may be held liable if they are unable to prove that this information complies with reality. If the claim is satisfied, the media editorial board may be required to announce the court ruling even if there are grounds excluding its liability.

When applying of Article 57 of the Law of the Russian Federation "On the Media", courts should take account of any amendments introduced since the Law was adopted in the legislation of the Russian Federation. Proceeding from this, Provision 3 Part 2 of the given article should be understood as relating to information contained in the response to a request for information or in materials of not only state authority press services but also those of local authorities. Similarly, Provision 4 Part 2 of the given article concerns literal reproduction of fragments of speeches by members of elected state and local government bodies.

13. When considering claims filed against a media editorial board, its author or founder to be held liable as envisaged by Article 152 of the Civil Code of the Russian Federation for distribution of incorrect and defamatory information, account must be taken of the fact that, if publication of the media in which the information was distributed is halted for the duration of the hearings, the court is entitled to require the defendant to refute or pay for publication of the claimant's response in other media.

14. In consideration of the fact that claims relating to protection of honour, dignity and business reputation also apply to protection of intangible rights, by virtue of Article 208 of the Civil Code of the Russian Federation, no statute of limitations applies thereto, other than as envisaged by law.

Courts should bear in mind that, in accordance with Articles 45 and 46 of the Law of the Russian Federation "On the Media", a refusal by a media editorial board to refute incorrect and defamatory information distributed thereby or to place a response (commentary, reply) by the person in relation to which the media distributed such information may be appealed in court within a year from the date when the information was distributed. Consequently, if the given year-long term is allowed to elapse without good reason, this might serve as independent grounds for dismissing a claim for invalidation of a media editorial board's refusal to refute information distributed thereby or to place the claimant's response in the same media. Whereat the person to whom the distributed information relates is entitled to file a court claim against the media editorial board for protection of their honour, dignity and business reputation without any time limits.

15. Article 152 of the Civil Code of the Russian Federation grants an individual with respect to which information has been distributed that denigrates his honour, dignity or business reputation the right, in addition to refutation of such information, to claim reimbursement of losses and moral damages. This rule, in as far as it concern the business reputation of an individual, is applied accordingly to protection of the business reputation of legal entities as well (Part 7 of Article 152 of the Civil Code of the Russian Federation). The rules regulating moral damages in connection with distribution of information denigrating the business reputation of an individual also apply, therefore, to distribution of such information in relation to a legal entity.

Moral damages are determined in monetary terms by the court when handing down its ruling. In determining the amount of moral damages, courts should bear in mind the circumstances specified in Part 2 of Article 151 and Part 2 of Article 1101 of the Civil Code of the Russian Federation and other circumstances worthy of attention. If incorrect and defamatory information is distributed in the media, when determining the amount of moral damages, the court should take into consideration the character and content of the publication, as well as the extent of distribution of the inaccurate information. Whereat the sum of moral damages to be recovered should be commensurable with the harm caused and not infringe on freedom of the media.

A claim for moral damages may be filed independently, if, for example, the media editorial board voluntarily publishes a refutation that satisfies the claimant. This circumstance should be taken into account by the court in determining the amount of the moral damages.

Courts should bear in mind that, although moral damages are determined by the court as a specific monetary sum, they are recognised by law as intangible, so state duty should be charged on the basis of Provision 3 of Part 1 of Article 33319 of the Tax Code of the Russian Federation, rather than as a percentage of the sum determined by the court as moral damages payable to the claimant.

16. If, together with a claim for protection of the honour and dignity of an individual or the business reputation of an individual or of a legal entity, another claim is filed for reimbursement of losses caused by the distribution of the defamatory information, the court decides this claim in accordance with Article 15 and Part 5 and 7 of Article 152 of the Civil Code of the Russian Federation.

17. When satisfying a claim, in the resolutive part of the decision, the court should specify how the incorrect and defamatory information should be refuted and, if necessary, set out the text of such a refutation, stating what specific information is incorrect and defamatory, when and how it was distributed, and also set the time (with respect to that established by Article 44 of the Law of the Russian Federation “On the Media”) during which it should be published.

A refutation and information distributed in the media in accordance with Article 152 of the Civil Code of the Russian Federation may be given the form of an announcement on the court ruling issued on the given cases, including publication of the text of the judicial ruling.

18. To draw the attention of courts to the fact that, on the basis of Article 152 of the Civil Code of the Russian Federation, judicial defence of honour, dignity and business reputation may be achieved through refutation of incorrect and defamatory information, obligation of the offender to pay monetary moral damages and reimbursement of losses. Whereat account should be taken of the fact that moral damages and compensation for losses are, if the claim is satisfied, subject to recovery in favour of the claimant, and not other persons specified thereby.

According to Part 3 of Article 29 of the Constitution of the Russian Federation, no-one may be compelled to express their opinions or convictions or to reject them. An apology is not envisaged as a means of judicial protection of honour, dignity and business reputation either by Article 152 of the Civil Code of the Russian Federation or by other rules of the legislation, so the court is not entitled to require the defendants in the given category of case to apologise to the claimants in any given form.

At the same time, the court is entitled approve an amicable agreements under which the parties mutually agree to the defendant apologising in connection with distribution of incorrect and defamatory information in relation to of the claimant, since this does not violate the rights or legitimate interests of other persons and does not run counter to the law, which contains no relevant prohibition.

19. In connection with adoption of the given ruling, to recognise as vitiated ruling of the Plenary Session of the Supreme Court of the Russian Federation of 18 August 1992 No. 11 “On Certain Questions Arising During Consideration by the Courts of Cases Relating to Protection of the Honour and Dignity of Individuals, as well as the Business Reputation of Individuals and of Legal Entities” as amended by ruling of the Plenary Session of 21 December 1993 No. 11, with amendments and supplements introduced by ruling of the Plenary Session of 25 April 1995 No. 6.

Ruling of the Plenary Session of the Supreme Court of the Russian Federation of 2 July 2009 No. 14 Moscow "On Certain Issues Arising in the Judicial Practice of the Application of the Housing Code of the Russian Federation"

According to Article 25 the Universal Declaration of Human Rights, the living standard required to maintain a person's health and the wellbeing of himself and his family includes such a mandatory component as housing. The integral right of every person to housing is also secured in the International Covenant on Economic, Social and Cultural Rights (Article 11). Whereat, as follows from Provision 1 of Article 12 the International Covenant on Economic, Social and Cultural Rights, the right to housing should be realised on the condition of a person's freedom of choice of place of residence. The need to respect a person's home is also stated in Article 8 of the European Convention on Protection of Human Rights and Fundamental Freedoms.

In consideration of the provisions of international legal acts, Article 40 of the Constitution of the Russian Federation secures every person's right to housing.

The constitutional right of individuals to housing relates to the fundamental human rights and consists in the state ensuring stable, constant use of living space by individuals occupying it on legal grounds, in provisions of housing out of the state, municipal and other housing stock to deprived and other individuals specified by law in need of housing, in assistance to individuals in improving their housing conditions, as well as in guaranteed inviolability of housing, and exclusion of people being arbitrarily deprived of housing (Articles 25 and 40 of the Constitution of the Russian Federation).

The key principles, forms and procedure for exercise of the right of individuals to housing are determined in the Housing Code of the Russian Federation, which came into effect on 1 March 2005.

Considering that, in connection with application of the Housing Code of the Russian Federation, courts have questions requiring resolution, for the purposes of ensuring unity of judicial practice and legality, the Plenary Session of the Supreme Court of the Russian Federation resolves to provide courts with the following clarifications:

General provisions

1. In accordance with Article 46 of the Constitution of the Russian Federation, every person is guaranteed judicial protection of their rights and freedoms. Proceeding from the given constitutional rule, Part 1 of Article 11 of the Housing Code of the Russian Federation (hereinafter the HC RF) establishes the priority of judicial protection of violated rights to housing, i.e., rights deriving from relations regulated by the housing legislation.

Protection of housing rights in the administrative manner by applying or appealing to a state or local government body or official superior to that which violated the right is implemented only in cases specified by the Housing Code of the Russian Federation or other federal laws (Part 2 of Article 11 of the HC RF). Whereat courts should take into account the fact that the right to apply to a court for protection of housing rights is also retained by the person when the law specifies an administrative procedure for protecting housing rights. If an interested person disagrees with the decision taken administratively, it is entitled to appeal it in court.

2. Violated rights to housing are protected by the court of general jurisdiction in accordance with the case jurisdiction established by the Civil Procedure Code of the Russian Federation (hereinafter the CPC RF).

According to Provision 1 Part 1 of Article 22 of the CPC RF, courts of general jurisdiction consider and decide cases with the participation of individuals, organisations, state and local government bodies for protection of violated or disputed rights, freedoms and legitimate interests, on disputes arising out of housing relations.

Cases on housing disputes are heard in courts on the basis of statements of claim (applications) by interested persons, of an application by a public prosecutor, submitted on the basis of and in the manner envisaged by Article 45 of the CPC RF, or of an application by the persons specified in Article 46 of the CPC RF.

3. Housing disputes (for recognition of rights to residential premises, for eviction from residential premises, for termination of the right to use residential premises of a former family member of the owner of these residential premises, for retention of the right of a former family member of the owner of residential premises to use them, for withdrawal of residential premises from the owner by compulsory purchase order (federal or municipal), for provision of residential premises under a social

rent contract, for invalidation of a decision to provide residential premises under a social rent contract and conclusion of a social rent contract on its basis, for enforced exchange of occupied residential premises, for invalidation of exchange of residential premises and others) are considered, proceeding from the provisions of Articles 23 and 24 of the CPC RF, in the first instance by the district court.

Bearing in mind that residential premises are defined by law as real estate (Part 2 of Article 15 of the HC RF, Provision 1 of Article 130 of the Civil Code of the Russian Federation, hereinafter the CC RF), by virtue of Provision 7 Part 1 of Article 23 of the CPC RF, Justices of the Peace have jurisdiction over cases for determining the procedure for using residential premises in common ownership of several persons, if a dispute arises between them with respect to the right to these residential premises or if they have not, at the same time, filed a claim that falls under the jurisdiction of the district court. If a dispute over determination of the procedure for using such residential premises (residential building, apartment) is connected with a dispute over the title to them (in particular, for recognition of the right to a share in the common ownership and allocation for possession and use), whether it falls under the jurisdiction of a Justice of the Peace or a district court depends on the sum involved in the claim (Provision 5 Part 1 of Article 23 of the CPC RF).

Justices of the Peace also hear cases on such property disputes as recovery from individuals and organisations of payment debt with respect to residential premises and utility, provided the sum involved in the claim does not exceed that set in Provision 5 of Part 1 of Article 23 of the CPC RF.

4. In resolving disputes arising out of housing relations, courts should take into account the fact that the housing legislation is run jointly by the Russian Federation and constituent entities of the Russian Federation (Provision “k” of Part 1 of Article 72 of the Constitution of the Russian Federation) and includes the Housing Code of the Russian Federation, federal laws adopted in accordance therewith, as well as corresponding orders of the President of the Russian Federation, decrees of the Government of the Russian Federation, regulatory and legal acts of federal executive authorities, laws and other regulatory and legal acts of constituent entities of the Russian Federation, regulatory and legal acts of local government bodies (Part 2 of Article 5 of the HC RF). Whereat, among the housing legislation acts, that which is of the greatest legal force in regulating housing relations is the Housing Code of the Russian Federation. Should a court discover a discrepancy between the rules of other housing

legislation acts and the provisions of the Housing Code of the Russian Federation, it is the rules of this Code that must be applied (Part 8 of Article 5 of the HC RF).

Bearing in mind that residential premises may be subject to both civil and housing relations, courts should keep in mind that the civil legislation, in contrast to the housing legislation, regulates relations connected with possession, use and disposal of residential premises as a subject of economic turnover (for example, transactions with residential premises, including commercial lease of residential premises).

5. Part 1 of Article 6 of the HC RF secures the general legal principle of the force of the legislation over time: a housing legislation act does not have retrospective force and is applied to housing relations arising after it comes into effect.

Whereat it should be borne in mind that Part 2 of Article 6 of the HC RF allows for application of a housing legislation act to housing relations arising before it comes into effect but only in cases stipulated by the given act. For instance, Article 9 of Federal Law dated 29 December 2004 No. 189-FZ "On Introduction into Effect of the Housing Code of the Russian Federation" (hereinafter the Introductory Law) attaches retrospective force to the rules of Section VIII of the HC RF "Management of Apartment Blocks": the rules apply to relations arising from previously concluded apartment block management agreements.

Since relations regulated by the housing legislation are, as a rule, protracted in character and, consequently, the rights and obligations of the parties to these relations might arise even after the relations themselves do, Article 5 of the Introductory Law establishes the general rule in accordance with which housing relations arising prior to the Housing Code of the Russian Federation coming into effect, are governed by the Housing Code of the Russian Federation with respect to those right and obligations that arise after it comes into effect, with the exception of cases specified by the Introductory Law. For instance, rules of Part 4 of Article 31 of the HC RF on the rights of the owner of residential premises in relation to a former member of his family are also applicable to the housing relations that arose before the given Code came into effect.

In connection with this, when considering a specific case, the court should determine when the housing relation under dispute arose between the parties. If it is established that the housing relations

under dispute are protracted in character, the Housing Code of the Russian Federation may be applied only to those rights and obligations of the parties that arose after it came into effect, i.e., after 1 March 2005.

6. The participants in housing relations are listed by Parts 2 and 3 of Article 4 of the HC RF. They include individuals, legal entities, the Russian Federation, constituent entities of the Russian Federation, municipalities, as well as foreign citizens, stateless persons and foreign legal entities.

Whereat courts should keep in mind that Part 3 of Article 4 of the HC RF applies to foreigners, stateless persons and foreign entities participating in housing relations under the national legal regime determined by the Russian housing legislation, with exceptions specified by the Housing Code of the Russian Federation or other federal laws. Thus, Part 5 of Article 49 of the HC RF specifies that residential premises are not provided under social rent contracts to foreign citizens or stateless persons unless an international treaty of the Russian Federation envisages otherwise. The same applies to subsidies for payment for residential premises and utilities (Part 12 of Article 159 of the HC RF) and privatisation of residential premises (Article 1 of the Law of the Russian Federation of 4 July 1991 No. 1541-I "On Privatisation of the Housing Stock in the Russian Federation").

Proceeding from the given provisions of Article 4 of the HC RF when resolving housing disputes with involving foreign citizens or stateless persons, courts should take into consideration that Articles 31, 69 and 100 of the HC RF, determining the rights and obligations of the family members of the owner of residential premises and the tenant of residential premises under a social rent contract and the tenant of specialised residential premises, do not contain any restrictions on the housing rights of people who are not citizens of the Russian Federation.

7. The relations regulated by the housing legislation concern residential premises, the material features of which are determined by Article 15 of the HC RF. Premises are recognised as residential if they are isolated, constitute real estate, are fit for permanent human habitation, meet the set sanitary and technical rules and standards and the rules and other requirement of the legislation (Part 2 of Article 15 of the HC RF).

Courts should keep in mind that the procedure for having premises recognised as residential and the requirements on residential premises, as well as the procedure for recognising residential premises as

unfit for habitation, are established by the federal executive body authorised by the Government of the Russian Federation in accordance with the Housing Code of the Russian Federation and other federal laws (Parts 3 and 4 of Article 15 of the HC RF). Currently in effect are Regulations on recognising premises as residential, residential premises as unfit for habitation and an apartment block as dangerous and subject to demolition or reconstruction, approved by decree of the Government of the Russian Federation of 28 January 2006 No. 47.

8. When resolving disputes connected to protection of housing rights, courts should bear in mind that the principle of inviolability of housing and inadmissibility of deprivation of housing constitutes one of the main principles not only of the constitutional but also the housing legislation (Article 25 of the Constitution of the Russian Federation, of Articles 1 and 3 of the HC RF).

The principle of inadmissibility of deprivation of housing presupposes that no-one may be evicted from residential premises or restricted in their right to use them, including the right to receive utilities, other than on the grounds and in the manner specified by the Housing Code of the Russian Federation and other federal laws (Part 4 of Article 3 of the HC RF).

Whereat courts should consider that the provisions of Part 4 of Article 3 of the HC RF on the inadmissibility of arbitrary deprivation of housing, meaning deprivation of housing out of court and on grounds not stipulated by law applying in relation to any persons occupying residential premises.

9. The Housing Code of the Russian Federation does not set any time-limit for protecting violated rights to housing, but the time-limits envisaged by the Civil Code of the Russian Federation (Articles 196 and 197 of the CC RF) and other provisions of Chapter 12 of the Civil Code of the Russian Federation concerning time-limits (Part 1 of Article 7 of the HC RF) are applied to housing relations under dispute. Whereat the general three-year time-limit (Article 196 of the CC RF) applies to housing relations under dispute, one of the main grounds for emergence of which consists in a contract (for example, a social rent contract for residential premises, a rent contract for specialised residential premises, a sub-rent contract for residential premises, an agreement on occupying and using residential premises of a family member of the owners of residential premises and others).

Right of ownership (title) and rights in rem to residential premises

10. When considering disputes arising in connection with exercise by the owner of his powers to possess, use and dispose of his residential premises, courts should consider the fact that the law sets limits to exercise of ownership rights to residential premises, to the effect that the owner is required: to use the residential premises according to their designation, i.e., for habitation by individuals (Part 1 of Article 17 of the HC RF, Provision 2 of Article 288 of the CC RF), maintain the residential premises in a proper condition, not permitting mismanagement thereof, to observe the rights and legitimate interests of neighbours, the rules for using residential premises, as well as the rules for maintaining common property of owners of premises in an apartment block (Part 4 of Article 30 of the HC RF). Use of residential premises for performance of professional activities or individual enterprise is permitted in observance of the provisions established by Parts 2 and 3 of Article 17 of the HC RF, Provision 3 of Article 288 of the CC RF.

Violation of the legally established limits to exercise of the right of ownership to residential premises entails imposition on the owner of various types of sanction envisaged by the legislation, such as administrative sanctions in the form of a warning or a fine (Articles 7.21, 7.22 of the Code of Administrative Offences of the Russian Federation) or civil law sanctions in the form of deprivation of title to residential premises (Article 293 of the CC RF).

11. The question of recognising a person as a member of the residential premises owner's family should be resolved by the courts in consideration of the provisions of Part 1 of Article 31 of the HC RF, proceeding from the following:

a) family members of the owner of residential premises are the spouse, living together with the owner on his premises, as well as the children and parents of the given owner. Whereat spouses are deemed to persons in a marriage registered at the relevant registry office (Article 10 of the Family Code of the Russian Federation, hereinafter the FC RF). For the given persons settled on the residential premises by the owner to be recognised as members of his family, it suffices to establish that they live together with the owner on these residential premises and it is not necessary to establish that they maintain a common household with the owner of the residential premises, provide mutual material or other support;

b) other relatives may be recognised as family members of the owner of residential premises, irrespective of the degree of their relationship (for example, grandparents, siblings, uncles, aunts, nephew, nieces and others) and dependents of the owner himself or of his family members and, in exceptional cases, other individuals (for example, a person living together with the owner without their marriage being registered), provided they were settled there by the owner of the residential premises as members of his family. For the listed persons to be recognised as family members of the owner of the residential premises, it is necessary not only to establish the legal fact of them being settled by the owner on the residential premises, but also to clarify the content of the owner's will in doing so, namely: was the person settled on the premises to live there as a member of the family or were the residential premises provided for habitation on other grounds (for example, for gratuitous use or under a rent contract). In the event of a dispute, the content of the owner's will is determined by the court on the basis of pleadings by the parties and third parties, witness testimony and written documents (such as agreement on settlement on the residential premises) and other evidence (Article 55 of the CPC RF).

Whereat it should be borne in mind that family relations are characterised, in particular, by mutual respect and mutual care for the members of the family, their personal non-property and property rights and obligations, common interests, responsibility towards one another and maintenance of a common household.

When determining the range of people classed as dependents, courts should be guided by Provisions 2 and 3 of Article 9 of Federal Law dated 17 December 2001 No. 173-FZ "On Work Pensions in the Russian Federation", which lists non-able-bodied persons and establishes the criteria for dependence (the person is fully supported or receives assistance from another person, this being his permanent and main source of funds for living).

Courts should also bear in mind that registration of a person at their place of residence on the basis of an application from the owner of residential premises or absence thereof does not constitute a determining factor for deciding whether the person is to be recognised as a family member of the owner of the residential premises, since, in accordance with Article 3 of the Law of the Russian Federation of 25 June 1993 No. 5242-I "On the Right of Citizens of the Russian Federation to Freedom of Movement, Choice of Place of Stay and Residence within the Russian Federation",

registration or otherwise cannot serve as grounds for restricting, or a condition for exercise of the rights and freedoms of individuals envisaged by the Constitution of the Russian Federation, federal laws and laws of constituent entities of the Russian Federation. Whether or not a person is registered on the residential premises is only one of the pieces of evidence in a case to be assessed by the court together with other evidence.

12. By virtue of Part 2 of Article 31 of the HC RF, family members of the owner of residential premises have equal rights with the owner to use the given residential premises, unless otherwise is agreed between the owner and the members of his family. Such an agreement may, in particular, provide the owner's family members with separate rooms in the owner's apartment, establish a procedure for use of common use premises within the apartment, and determine how much each of the owner's family members pays for the residential premises and utilities, and so on.

In connection with the fact that the Housing Code of the Russian Federation does not establish special requirements on the procedure for concluding such an agreement or its form and conditions, proceeding from the rules of Part 1 of Article 7 of the HC RF, it is the rules of the Civil Code of the Russian Federation on civil law transactions that are applied to such agreements (Articles 153–181 of the CC RF).

These same rules should be applied to an agreement between the owner of residential premises and his family members on liability for obligations deriving from use of the residential premises, the possibility of concluding such an agreement being provided for by Part 3 of Article 31 of the HC RF, as well as to an agreement between the owner of residential premises and a former member of his family on retention of usage rights to the residential premises (Part 4 of Article 31 of the HC RF).

When deciding disputes connected with exercise by family members of the owner of residential premises of the right to use these premises, it should be borne in mind that Part 2 of Article 31 of the HC RF does not entitle them to settle other persons on the given residential premises. At the same time, considering the provisions of Article 679 of the CC RF on the unconditional right of the tenant under a rent contract and of individuals living permanently therewith to settle underage children on residential premises, as well as Part 1 of Article 70 of the HC RF on the right of parents to settle their underage children on residential premises without the mandatory consent of the other family members

of the tenant under a social rent contract and of the landlord, by analogy with the law (Part 1 of Article 7 of the HC RF), for the purpose of securing the rights of underage children, family members of the owner of residential premises may be recognised as being entitled to settle their underage children on the residential premises.

13. According to the general rule, in accordance with Part 4 of Article 31 of the HC RF, in the event of termination of family relations with the owner of residential premises, the former family member of the owner of the residential premises does not retain the right to use the given residential premises, unless the owner so agrees with his former family member. This means that former family members of the owner loses the right to use the residential premises and must vacate them (Part 1 of Article 35 of the HC RF). Otherwise, the owner of the residential premises is entitled to demand their eviction through a court of law without provision of alternative accommodation.

In the meaning of Parts 1 and 4 of Article 31 of the HC RF, former family members of the owner of residential premises are those people with whom family relations with the owner have been terminated. Termination of family relations between spouses should be understood as divorce at a registry office or in court or annulment of the marriage. Refusal to maintain a common household by other persons with the owner of residential premises, absence of a common budget between them and the owner or common household items, failure to provide mutual support and so on, as well as departure to live elsewhere, may testify to termination of family relations with the owner of residential premises, but should be assessed in conjunction with the other evidence produced by the parties.

Should a dispute arise, the question of recognising a person as a former family member of the owner of residential premises is decided by the court in consideration of the specific circumstances of each case.

Whereat, considering the provisions of Part 1 of Article 31 of the HC RF, it should be kept in mind that, since maintenance of a common household between the owner of residential premises and a person settled thereby on the given residential premises does not constitute a mandatory condition for his recognition as a family member of the owner of residential premises, absence of a common household by the owner of residential premises and the given person or termination of maintenance of a common household between them (by mutual consent, for example) may not in itself testify to

termination of family relations with the owner of the residential premises. The given circumstance should be evaluated in aggregate with the other evidence produced by the parties to the case (Article 67 of the CPC RF).

Courts should also bear in mind that, in accordance with Provision 4 of Article 71 of the FC RF, a child in relation to which the parents (or one of them) are deprived of their parental rights retains the right to use the residential premises.

14. By virtue of the provisions of the Family Code of the Russian Federation concerning the responsibility of parents to bring up and develop their children, their obligation to take care of their health, physical, mental, spiritual and moral development, the divorce of the parents, annulment of their marriage or separate residence of the parents does not affect the child's rights (Provision 1 of Article 55, Provision 1 of Article 63 of the FC RF), including its housing rights. Consequently, termination of family relations between the parents of a minor who lives on residential premises owned by one of the parents does not entail the child losing its right to use the residential premises in the text of the rules of Part 4 of Article 31 of the HC RF.

15. When considering a claim by the owner of residential premises against a former family member for termination of the right to use residential premises and eviction, in the event of objection by the defendant to the claim being satisfied, for the purposes of ensuring a balance of the interests of the parties to the relations under dispute, the court should, proceeding from the provisions of Part 4 of Article 31 of the HC RF, decide the question as to whether the former family member may retain the right to use the residential premises for a certain time, depending on filing thereby of a counterclaim to this effect.

Part 4 of Article 31 of the HC RF permits the court to pass a decision on a former family member retaining the right to use residential premises for a certain time if the following circumstances are established:

a) the former family member of the owner of residential premises has no grounds for acquiring or exercising the right to use other residential premises (i.e., the former family member of the owner does not own any other residential premises, does not have the right to use other residential premises under a rent contract; the former family member is not a participant in an agreement on shared ownership in

construction of a residential building or apartment or other civil law contract for acquisition of housing and so on);

b) the former family member of the owner has no opportunity to provide themselves with alternative accommodation (purchase an apartment, conclude a rent contract for residential premises and so on) by virtue of his property status (absence of a salary or sufficient funds) and other circumstances deserving of attention (state of health, inability to work due to age or state of health, existence of dependents, loss of job, study and the like).

When determining the time for which the former family member of the owner of residential premises retains the right to use the residential premises, the court should proceed from the principle of reasonableness and fairness and the specific circumstances of each case, considering the material position of the former family member, the possibility of cohabitation of the parties on the same premises and other circumstances deserving of attention.

16. When deciding the question of a former family member of the owner of residential premises retaining the right to use the residential premises for a certain time, in accordance with Part 4 of Article 31 of the HC RF, the court is also entitled, on the basis of a claim by the former family member of the owner, to require the owner of residential premises to provide alternative accommodation for a former spouse or other family members towards which the owner fulfils maintenance obligations.

The persons obliged to pay maintenance and the grounds for maintenance obligations are determined by the Family Code of the Russian Federation (Provision 4 of Article 30, of Article 80–105 of the FC RF).

When deciding a question of the possibility of requiring the owner of residential premises to provide other residential premises to a former family member, the court should proceed from the specific circumstances of the case, considering, in particular: how long the couple were married, how long the owner of the residential premises and the former family member had cohabited on the residential premises; the age, state of health, the material position of the parties; how long the owner of the residential premises has been and will be due to pay maintenance to the former family member; whether the owner of the residential premises has funds to acquire other residential premises for the

former family member; whether the owner of the residential premises owns other residential premises suitable for provision to the former family member for habitation, apart from those on which he has lived with the former family member, and the like.

If the court concludes that the owner of the residential premises should be required to provide the former family member with alternative accommodation, the court ruling should determine: the duration of the given obligation of the owner of the residential premises, the main characteristics and location of the other residential premises (proceeding from the requirements of Part 2 of Article 15 and Part 1 of Article 89 of the HC RF), as well as the basis on which the owner provides the former family member with other residential premises. With the consent of the former family member of the owner of the residential premises, the residential premises provided to the former may be located in a different population centre. Concerning the size of the residential premises provided by the owner to the former family member, in consideration of the owner's material possibilities and other circumstances deserving of attention, the court should determine only their minimum area.

Bearing in mind that Part 4 of Article 31 of the HC RF does not stipulate the manner, terms and rights on the basis of which the owner of the residential premises should provide alternative accommodation to the former family member in relation to which he bears maintenance obligations (right of ownership, rent, gratuitous use), the court should decide this matter proceeding from the specific circumstances of each case, guided by the principles of reasonableness, fairness, humanism and the real possibilities of the owner of the residential premises to fulfil the court ruling. Consequently, the court is entitled to require the owner of the residential premises to provide the former family member with alternative accommodation both under a rent contract or for gratuitous use, and by ownership title (i.e., to purchase, gift, build the residential premises, etc.).

17. The resolutive part of the court decision on a claim by the owner of residential premises for termination of the right of a former family member of the owner to use these residential premises and for their eviction should contain exhaustive conclusions of the court deriving from the actual circumstances of the case established in the reasoning and concerning satisfaction of the claim or full or partial dismissal thereof (Part 5 of Article 198 of the CPC RF). It should formulate precisely what the court resolved in particular both with respect to the initially filed claim by the owner of the residential premises and any counterclaim by the former family member (defendant) (Article 138 of

the CPC RF). The court should also decide other matters specified in the law in order to prevent the decision entailing enforcement difficulties (Part 5 of Article 198, of Article 204–207 of the CPC RF).

18. Courts should take into account the fact that, if the legal relations with respect to use of residential premises are protracted in nature, the provisions of Part 4 of Article 31 of the HC RF may, by virtue of Article 5 of the Introductory Law, be also applied if family relations between the owner of the residential premises and a member of his family cohabiting with the owner on the latter's residential premises were terminated before the Housing Code of the Russian Federation came into effect.

At the same time, when considering a claim by the owner of the residential premises for a former family member's right to use these residential premises to be recognised as lost, it should be borne in mind that, in accordance with Article 19 of the Introductory Law, the provisions of Part 4 of Article 31 of the HC RF do not apply to former family members of the owner of privatised residential premises on the condition that, at the time the given residential premises were privatised, such persons enjoyed equal rights to use these premises with the person that privatised them, unless otherwise was established by law or by agreement. According to Parts 2 and 4 of Article 69 of the HC RF (until 1 March 2005 – Article 53 of the Housing Code of the RSFSR, hereinafter the HC RSFSR), equal rights with the tenant of the residential premises in the state and municipal housing stock under a social rent contract, including the right to use these premises, are enjoyed by the family members and former family members of the tenant still living on the occupied residential premises.

Provision 2 of Article 292 of the CC RF does not apply to the former family members of the owner of residential premises named in Article 19 of the Introductory Law since, by giving consent to privatisation of the residential premises occupied under a social rent contract, without which it would be impossible (Article 2 of the Law of the Russian Federation of 4 July 1991 No. 1541-I "On Privatisation of the Housing Stock in the Russian Federation"), they proceeded from the assumption that their right to use the given residential premises would be termless, and so it should be taken into account on transfer of the title of the residential premises to another person on corresponding grounds (for example, sale and purchase, exchange, gifting, rent, inheritance).

Similarly, when the title to residential premises transfers to another person, the question must be decided concerning retention of the right to use these residential premises by a former family member

of the owner of the residential premises who previously exercised their right to privatisation of the residential premises and then moved into alternative accommodation as a family member of the tenant under a social rent contract and, residing there, gave the requisite consent to privatisation of these residential premises.

19. In the meaning the provisions of Part 5 of Article 31 of the HC RF, the owner of residential premises is not deprived of the opportunity, at his own discretion, to dispose of residential premises belonging to him (for example, to sell or gift them) even if the term of the right of a former family member of the owner to use these residential premises, as established by a court on the basis of Part 4 of Article 31 of the HC RF, has not yet expired.

If, during the court-established term of the right of a former family member of the owner to use the residential premises, the owner's title to the residential premises is terminated on any grounds (for example, in connection with the death of the owner of the residential premises, as a result of the owner concluding civil law transactions), the right of the former family member of the owner to use the given residential premises terminates together with termination of the title before expiry of the given term and he is required to vacate the residential premises (Part 5 of Article 31, Part 1 of Article 35 of the HC RF).

If the former family member of the owner does not vacate residential premises, the new owner of these residential premises is entitled to demand his eviction therefrom through the courts (Part 1 of Article 35 of the HC RF).

20. In order to correctly decide cases on disputes connected with withdrawal of residential premises from the owner by compulsory purchase order (Article 32 of the HC RF), courts should bear in mind the following:

a) the rules contained in Article 32 of the HC RF, developing the provisions of Part 3 of Article 35 of the Constitution of the Russian Federation on the possibility of compulsory purchase only on the condition of prior and equal value compensation, are designed primarily to ensure the rights and legitimate interests of the owner of the residential premises;

b) a decision on a compulsory purchase order for residential premises should be taken by the competent body, i.e., the state or local government body that decides on compulsory purchase of the relevant land plot for state or municipal needs (Part 2 of Article 32 of the HC RF). The legal basis on which the owner of the residential premises uses the land plot (ownership, lease, inherited life-long possession, right of permanent (timeless) use) is of no significance. The procedure for preparing and adopting a compulsory purchase order for a land plot is determined by the federal legislation, in particular the civil and land legislation (Articles 279–283 of the CC RF, of Article 9–11, 49, 55, 61 and 63 of the Land Code of the Russian Federation);

c) it is the state or local government body that bears the burden of proving that the decision on compulsory purchase derives from state or municipal requirements and use of the land plot for the relevant purposes is not possible without termination of the ownership title to the relevant residential premises (Articles 49 and 55 of the Land Code of the Russian Federation, Provision 1 of Article 239 of the CC RF), other than in cases envisaged by law (for example, by Parts 10–11 of Article 32 of the HC RF).

The state or municipal needs on which a land plot compulsory purchase order is based should be understood as needs of the Russian Federation, of a constituent entity of the Russian Federation or of a municipality connected with circumstances established by federal laws or laws of constituent entities of the Russian Federation, respectively, that cannot be satisfied unless the land plot comes under compulsory purchase (for example, fulfilment of international obligations of the Russian Federation, location of facilities of state or municipal significance in the absence of other options for their location, development in accordance with city and rural development plans);

d) observance of the procedure stipulated by Parts 2–4 of Article 32 of the HC RF prior to compulsory purchase of residential premises from their owner is mandatory, so is subject to verification as a circumstance of significance for the case. The given procedure includes: a decision on compulsory purchase of residential premises by the competent body (Part 2 of Article 32 of the HC RF), state registration of this decision with the authority responsible for state registration or real estate rights and transactions (Part 3 of Article 32 of the HC RF), written notification of the owner of the residential premises of the relevant decision and its registration date at least a year before his residential premises come under compulsory purchase (Part 4 of Article 32 of the HC RF).

Whereat, proceeding from the provisions of Part 4 of Article 32 of the HC RF, not only the fact that such a notification was sent to the owner of the residential premises by the competent body is legally significant, but also the fact that the owner received it. In this connection, an announcement in the media (for example, on the radio, television, in printed editions or on the Internet) of compulsory purchase of the residential premises of a specific owner may not be recognised as due notification of the owner of the impending compulsory purchase of these residential premises.

Failure to observe the procedure preceding compulsory purchase of residential premises from the owner should entail dismissal of a claim by a state (or local government) body for compulsory purchase of residential premises;

e) a claim for compulsory purchase of the residential premises may be filed by a state or local government body within two years of the owner of the residential premises being sent a notification of the compulsory purchase order issued with respect to his residential premises (Part 9 of Article 32 of the HC RF). If the given deadline is missed, this constitutes grounds for dismissing the claim for compulsory purchase of the residential premises;

f) if the owner (co-owner) of the residential premises subject to compulsory purchase is a minor or there are family members of the owner of the given residential premises under guardianship or wardship or underage family members of the owner without parental care reside there (as known to the guardianship and wardship authority), the consent of the guardianship and wardship authority's consent is required for compulsory purchase of the residential premises (Provision 2 of Article 37, Provision 4 of Article 292 of the CC RF, Article 20 of Federal Law dated 24 April 2008 No. 48-FZ "On Guardianship and Wardship"). In order to verify such consent and protect the rights and legitimate interests of the given categories of individual, the court should summon the guardianship and wardship authority to participate in the case to give its opinion on the case concerning compliance by the compulsory purchase agreement for the residential premises (or the residential premises provided to replace them) with the rights and legitimate interests of minors and wards (Article 47 of the CPC RF);

g) bearing in mind that the legal consequences of compulsory purchase of an owner's residential premises means his eviction therefrom, proceeding from the rules of Part 3 of Article 45 of the CPC RF, a public prosecutor should be summoned to participate in the case;

h) the compulsory purchase price of residential premises is determined according to the rules specified in Part 7 of Article 32 of the HC RF and includes the market value of the residential premises, as well as losses caused to the owner by the compulsory purchase, including loss of profit. An approximate list of potential losses on the part of the owner of the residential premises is provided in Part 7 of Article 32 of the HC RF. At the same time, the compulsory purchase price of the residential premises, as follows from the content of Part 5 of Article 32 of the HC RF, may not include any investments the owner of the residential premises has made that substantially increase the value thereof (such as complete overhaul), if made after the owner receives the notification specified in Part 4 of Article 32 of the HC RF concerning compulsory purchase of the residential premises and before the compulsory purchase agreement for the residential premises is concluded and not constituting part of the expenditures required for the residential premises to be used for their designated purpose.

In order to resolve a dispute between the parties regarding the market value of the residential premises, the court may appoint an expert review (Article 79 of the CPC RF);

i) a claim by the state or local government body that issued the compulsory purchase order for the residential premises for the owner to be resettled therefrom to other residential premises may not be satisfied, if the owner of the residential premises objects to this, since, in accordance with Part 8 of Article 32 of the HC RF, provision of other residential premises to replace those under compulsory purchase is permitted only on agreement between the parties.

Nor does the court have the right to require the given bodies to provide the owner of the residential premises under compulsory purchase with alternative accommodation, since it follows from the content of Article 32 of the HC RF that the state or local government body that issued the compulsory purchase order for the residential premises bears the obligation only to pay the compulsory purchase price for the relevant residential premises.

In the event of agreement between the parties on provision of other, replacement residential premises, the compulsory purchase price of the residential premises is determined according to the rules of Part

7 of Article 32 of the HC RF, minus the cost of the residential premises provided (Part 8 of Article 32 of the HC RF). If the replacement residential premises are worth less than the compulsory purchase price of the owner's residential premises, he is paid the difference between the value of the previous and the new residential premises and, if the replacement residential premises are worth more than the compulsory purchase price of the owner's residential premises, by agreement between the parties, the owner is required to pay the difference between them.

In the meaning of Part 8 of Article 32 of the HC RF, the owner of the residential premises should be provided with replacement residential premises by right of ownership. At the same time, with the owner's consent, it is possible for him to be provided with replacement residential premises on other legal grounds (for example, out of the state or municipal housing stock under a social rent contract; under a rent agreement in social service system homes);

j) compulsory purchase of the residential premises before the notice period expires from receipt by the owner of the relevant notification is permitted, by virtue of Part 4 of Article 32 of the HC RF, only with the owner's consent;

k) the resolutive part of a court decision satisfying a claim for compulsory purchase of the residential premises should contain a conclusion on termination of the person's ownership title to residential premises and on payment to the owner of monetary compensation or provision of replacement residential premises by title or on other legal grounds by the Russian Federation, a constituent entity of the Russian Federation or a municipality (Part 6 of Article 32 of the HC RF).

21. Courts should keep in mind that state registration of a state or local government body decision on compulsory purchase of residential premises from the owner in connection with compulsory purchase of the accommodating land plot for state or municipal needs does not restrict the owner's right to possess, use or dispose of the given residential premises at his own discretion and does not release the owner from the obligation to maintain the residential premises (Article 209 of the CC RF, Part 2–4 of Article 30, Part 5 of Article 32 of the HC RF).

22. Courts should take into account the fact that, by virtue of Part 10 of Article 32 of the HC RF, if an apartment block is, in due manner, deemed dangerous and subject to demolition or reconstruction, as a general rule, this constitutes grounds for the decision-making body (i.e., inter-departmental

commission set up proceeding from whether the residential building belongs to a federal executive body, executive body of a constituent entity the Russian Federation or local government body) to demand that owners of residential premises in the given building demolish or reconstruct it within a reasonable time and at their own expense.

Should the owners of the residential premises fail to demolish or reconstruct the apartment block by the set deadline, the local government body issues a compulsory purchase order for the land plot accommodating the given dangerous building for municipal needs (consisting in ensuring that there is not a residential building on the territory of the municipality that is unable to ensure safety and health of individuals) and, accordingly, compulsory purchase of all the residential premises in the building, other than residential premises owned by the municipality. In this case, in accordance with Part 10 of Article 32 of the HC RF, the procedure for compulsory purchase of residential premises in a dangerous apartment block is determined by the rules of Parts 1–3, 5–9 of Article 32 of the HC RF. Whereat the provisions of Part 4 of Article 32 of the HC RF on mandatory compulsory purchase notification of the owner of residential premises do not apply.

It should be drawn to the notice of the courts that the Housing Code of the Russian Federation does not establish any legal consequences of an apartment block in which not only owners of residential premises reside, but also tenants thereof under a social rent contract, being duly recognised as dangerous and subject to demolition or reconstruction. Considering this, when hearing disputes connected with securing the housing rights of owners of residential premises in such an apartment block, the court is entitled, proceeding from the rules of Part 1 of Article 7 of the HC RF on application of the housing legislation, to apply to the given relations, by analogy, the provisions of Part 10 of Article 32 of the HC RF compulsory purchase of residential premises from the owner or provision thereto of alternative accommodation, their prices being deducted from the compulsory purchase price.

Social rent of residential premises

23. The grounds for conclusion of a social rent contract consist in a decision adopted in observance of the requirements of the Housing Code of the Russian Federation by a local government body on providing residential premises to a citizen on the list of those in need of housing (Part 3 and 4 of

Article 57, Article 63 of the HC RF). The given decision may also be adopted by another authorised body in cases envisaged by federal law, by order of the President of the Russian Federation or by law of a constituent entity the Russian Federation (Provision 6 of Article 12, Provision 5 of Article 13, Part 3, 4 of Article 49 of the HC RF).

At the same time, the Housing Code of the Russian Federation does not specify the grounds, procedure and consequences of a decision on provision of residential premises under a social rent contract being invalidated.

In connection with this, courts should proceed from the fact that violation of the requirements of the Housing Code of the Russian Federation when a decision is taken to provide residential premises under a social rent contract may, in consideration of the provisions of Provision 2 Part 3 of Article 11 of the HC RF and Part 4 of Article 57 of the HC RF, serve as grounds for a court claim being filed for this decision and the social rent contract concluded on its basis to be invalidated and the residents evicted. Since such claims are interlinked, for the purposes of correct and timely consideration and resolution of the case, they should be heard by the court in a single set of proceedings (Article 151 of the CPC RF).

Claims for invalidation of a decision to provide a citizen with residential premises under a social rent contract and the social rent contract concluded on its basis are subject to consideration by analogy of law (Part 1 of Article 7 of the HC RF) according to the rules set by Article 168 of the CC RF on invalidation of transactions that do not comply with the law or other legal acts, as well as Provision 1 of Article 181 of the CC RF, which envisages a three-year time-limit for enforcement of the consequences of invalidity of a null and void transaction, running from the day on which fulfilment of the given transaction began.

Claims for invalidation of a decision to provide a citizen with residential premises under a social rent contract and the social rent contract concluded on its basis may be filed by an individual, organisation, local government body or other body authorised to decide on providing residential premises under a social rent contract, if they believe that this decision and agreement violate their rights (Provisions 2, 6 Part 3 of Article 11 of the HC RF, Article 12 § 5 of the CC RF, Provision 2 of Article 166 of the CC RF), as well as a public prosecutor (Part 1 of Article 45 of the CPC RF).

The court is entitled to invalidate a decision on provision of residential premises under a social rent contract if is it established that:

a) the relevant individuals submitted incorrect information as grounds for being listed as in need of housing (for example, on the members of the family, their income sources and the amounts received, as well as on the taxable assets of the family members);

b) the rights of other individuals to the given residential premises are violated (for example, the queue for provision of residential premises jumped);

c) unlawful actions were performed by officials in deciding the question of providing residential premises;

d) the procedure and conditions for providing residential premises under a social rent contract envisaged by the Housing Code of the Russian Federation, federal laws, orders of the President, or laws of a constituent entity the Russian Federation were violated in other ways.

Since an invalid transaction does not entail any legal consequences, other than those connected with its invalidity, and it is invalid from the time it is concluded (Provision 1 of Article 167 of the CC RF), in the event that a decision to provide a citizen with residential premises under a social rent contract and the social rent contract concluded on its basis are recognised as invalid, the residents of the given premises are subject to eviction therefrom to the residential premises they previously occupied or, if this is impossible, proceeding from the specific circumstances of the case, they may be provided with residential premises analogous to those previously occupied (Provision 2 of Article 167 of the CC RF).

24. According to Part 2 of Article 69 of the HC RF, family members of the tenant of the residential premises under a social rent contract have equal rights and obligations with the tenant, irrespective of whether they took up residence on the residential premises at the same time as the tenant or were subsequently settled thereon as members of the tenant's family. The family members of the tenant enjoy, in particular, the following rights: termless use of the residential premises (Part 2 of Article 60 of the HC RF); retention of the right to use the residential premises during their temporary absence (Article 71 of the HC RF); participation in deciding: rearrangement of and alterations to the residential premises (Provision 5 Part 1 of Article 26 of the HC RF), eviction, in due manner of other persons

from the residential premises (Article 70 of the HC RF), exchange of the residential premises (Article 72 of the HC RF), subletting of the residential premises (Article 76 of the HC RF), settling of temporary residents (Article 80 of the HC RF), resettlement to residential premises with a smaller area (Article 81 of the HC RF), amendment of the social rent contract (Article 82 of the HC RF), cancellation of the social rent contract (Part 2 of Article 83 of the HC RF).

Family members of the tenant of the residential premises who are legally capable and whose legal capacity is restricted by a court bear joint and several liability with the tenant for obligations deriving from the social rent contract (the obligations to safeguard the residential premises and maintain them in a proper condition, perform current repairs thereto, make payment for the residential premises and utilities (Part 3 of Article 67 of the HC RF)).

25. When deciding disputes connected with a person being recognised as a family member of the tenant of residential premises under a social rent contract, courts should take into account the fact that the persons classed as family members of the tenant are listed in Part 1 of Article 69 of the HC RF. They include:

a) the given tenant's spouse, children and parents cohabiting with him;

b) other relatives, dependents, if settled on the premises by the tenant as family members and maintaining a common household therewith.

Any other relatives may be recognised as relatives and as family members of the tenant, irrespective of the degree of their relationship, be they antecedents or descendants.

When determining the range of people classed as dependents, courts should be guided by Provisions 2 and 3 of Article 9 of Federal Law dated 17 December 2001 No. 173-FZ "On Work Pensions in the Russian Federation", which lists non-able-bodied persons and defines the concept of dependence.

Maintenance of a common household, this being a mandatory condition for other relatives and dependents being recognised as family members of the tenant, should, in particular, be understood as the tenant and the given persons having a joint budget, common food expenditures, property for common use and the like.

For other relatives and dependents to be recognised as family members of the tenant, it is also necessary to clarify the content of the tenant's will (that of other family members) in relation to their occupancy of the residential premises: were they settled on the premises to live there as a member of the family or were the residential premises provided for habitation on other grounds (sublease, as temporary residents). In the event of a dispute, the fact of a person being settled as a member of the tenant's family or on other grounds may be confirmed by any available evidence (Article 55 of the CPC RF).

In accordance with Part 1 of Article 69 of the HC RF, in addition to the categories of individual mentioned above, other person may also be recognised as family members of the tenant, but only in exceptional cases and by a court. When deciding whether other persons may be recognised as family members of the tenant (for example, persons cohabiting with the tenant outside a registered marriage), the court should clarify whether these persons were settled on the premises as family members of the tenant or in another capacity, whether they maintained a common household with the tenant, how long they have lived on the residential premises, whether they have the right to other residential premises and whether they have lost such right.

26. To draw the attention of courts to the fact that, according to the meaning of the provisions of Article 69 of the HC RF and Part 1 of Article 70 of the HC RF, which are unified in regulatory terms, persons settled by the tenant of residential premises under a social rent contract as family members acquire equal rights and obligations with the tenant on the condition that they were settled on the premises in observance of the procedure envisaged by Part 1 of Article 70 of the HC RF for the tenant to exercise its rights to settle other persons on the residential premises as family members.

In accordance with Part 1 of Article 70 of the HC RF, the tenant is entitled, with the written consent of his family members, including those who are temporarily absent, to settle his spouse, children and parents on the residential premises he occupies under a social rent contract. Whereat, it is of no significance if the per capita floor space of the residential premises is less than the standard (Part 5 of Article 50 of the HC RF).

At the same time, for the tenant to settle other individuals on the residential premises as cohabiting family members, the tenant should obtain the written consent not only of his family members but also

the landlord. The landlord is entitled to prohibit other persons from taking up occupancy if this will cause the per capita floor space of the residential premises to be less than the standard.

For the purpose of securing the right of underage children to live and be brought up within the family (Article 54 of the FC RF), Part 1 of Article 70 of the HC RF establishes that the consent of other of the tenant's family members or of the landlord is not required for settlement of minors with their parents (these might be the tenant's own children or those of other family members residing on the premises).

Courts should also bear in mind that the Housing Code of the Russian Federation (Part 1 of Article 70 of the HC RF) does not specify the possibility of restricting, by agreement between the parties, the right of a settled family member of the tenant to use the residential premises under a social rent contract.

Refusal by the landlord to consent to other persons taking up residence on the premises may be appealed through the courts. At the same time, the reasons for which family members of the tenant refuse their consent to other persons occupying the residential premises are of no legal significance, so a court may not recognise such refusal as unlawful.

27. In accordance with Part 2 of Article 70 of the HC RF, if new family members of the tenant occupy residential premises, this entails the need to make corresponding amendments to and include the given people in the previously concluded social rent contract for the residential premises. At the same time, failure to comply with this rule does not, in itself, constitute grounds for the settled tenant's family member to be recognised as not having acquired the right to the residential premises, provided the procedure established by Part 1 of Article 70 of the HC RF for the tenant to settle other individuals on the residential premises as members of his family is observed.

28. If written consent was not obtained from the tenant and (or) the family members of the tenant, as well as from the landlord, when required, to a person taking up residence on the residential premises (Part 1 of Article 70 of the HC RF), such occupancy should be deemed unlawful and not granting the given person the rights of a family member of the tenant to the residential premises. In this case, the landlord, the tenant and (or) a family member of the tenant is entitled to demand that the new occupant eliminate any violations of their housing rights and restore the situation prior to their violation (Provision 2 Part 3 of Article 11 of the HC RF), to which, by analogy of law (Part 1 of Article 7 of the

HC RF) applicable to the rules specified by Article 208 of the CC RF, the time-limit does not apply. When satisfying the given demand, the illegal occupant of the residential premises should be evicted without being provided with alternative residential premises.

29. By virtue of Part 4 of Article 69 of the HC RF, if an individual ceases to be a family member of the tenant of the residential premises under a social rent contract (for example, in connection with divorce, termination of maintenance of a common household), but continues living on the occupied premises, he retains the same rights as the tenant and his family members, including: the right to termless use of the residential premises (Part 2 of Article 60 of the HC RF), retention of the right to use residential premises during temporary absence (Article 71 of the HC RF), the right to settle other persons on the residential premises in observance of the rules of Article 70 of the HC RF, the right to demand enforced exchange of the residential premises through the courts (Article 72 of the HC RF), the right conclude a sublease in observance of the rules of Article 76 of the HC RF and so on.

Since a former family member of the tenant of residential premises under a social rent contract who continues living there retains the same rights as the tenant and his family members, the written consent of the given former family member of the tenant is required for the tenant to settle his spouse, underage children and parents, as well as other individuals as members of his family, on the premises (Part 1 of Article 70 of the HC RF). The consent of the former family member of the tenant in the format stipulated by law is also required in other cases when the tenant exercises his powers under the social rent contract (exchange of the residential premises, subletting thereof, settlement of temporary inhabitants, replacement of the residential premises, alteration and rearrangement of the residential premises, amendment or cancellation of the contract).

30. Part 4 of Article 69 of the HC RF establishes the independent liability of the former family member of the tenant of the residential premises under a social rent contract who continued to live there with respect to their obligations deriving from the relevant social rent contract. Consequently, such former family member is entitled to demand that the landlord and the tenant conclude a separate contract with them determining the procedure and scope of his participation in the rental payment for the residential premises and utilities, repair and maintenance of the residential premises. A proposal to conclude such an agreement may also be made by the tenant. Disputes arising in connection with

refusal by the landlord and (or) of the tenant to conclude such an agreement or in connection with failure by the parties to agree on its content are resolved judicially.

The court considering the given disputes is entitled, with respect to the provisions of Parts 4 and 5 of Article 155, Article 156 of the HC RF and Article 249 of the CC RF, to determine the procedure and scope of the participation by the former family member of the tenant in payment for rent of the residential premises and utilities, proceeding from his share in the total area of the residential premises, while requiring the landlord (managing organisation) to conclude a relevant agreement with the former family member of the tenant and issue thereto a separate payment document for premises rental and utilities. If the residents of premises under a social rent contract agree on determination of the procedure for using these residential premises (for example, the former family member of the tenant uses a separate room in the apartment), the costs outlined above may be determined by the court in consideration of the given circumstance.

31. Courts should bear in mind that the Housing Code of the Russian Federation does not contain rules concerning the right of a family member of the tenant of the residential premises to demand that the landlord amend the social rent contract by concluding a separate social rent contract therewith. In connection with this, a claim by a family member of the tenant for conclusion therewith of a separate rent contract for the residential premises (including in consideration of the provisions of Article 5 of the Introductory Law and in relation to the residential premises provided under a social rent contract before 1 March 2005), proceeding from the scope of the housing rights of the tenant and family members as determined in Article 67 of the HC RF and Provision 6 of the Model Social Rent Contract for residential premises, approved by decree of the Government of the Russian Federation of 21 May 2005 No. 315, is not subject to satisfaction.

32. During temporary absence of the tenant of the residential premises and (or) family members, including former family members, they retain all the rights and obligations under the social rent contract for the residential premises (Article 71 of the HC RF). If the absence of the given persons from the residential premises is not temporary, interested parties (the landlord, the tenant, family members of the tenant) are entitled to petition a court to recognise them as having lost their rights to the residential premises on the basis of Part 3 of Article 83 of the HC RF in connection with departure to another place of residence and thus to cancel the social rent contract.

When deciding disputes over recognition of the tenant, a family member of the tenant or a former family member of the tenant of the residential premises as having lost their right to use the residential premises under a social rent contract as a consequence of being permanently absent therefrom by reasons of having vacated the premises, courts should clarify: why and for how long the defendant has been absent from the residential premises, whether departure from the residential premises was of necessity (conflict within the family, divorce) or voluntary, temporary (work, study, treatment and the like) or permanent (removed his possessions, moved to a different population centre, remarried and lives with the new family in different residential premises and the like), whether the other residents of the premises hampered him in using them, whether the defendant acquired the right to use other residential premises at a new place of residence, whether he fulfils his obligations under the contract to pay for the residential premises and utilities and so on.

If the court establishes circumstances testifying to voluntary departure by the defendant from residential premises to a different place of residence and absence of impediments to using the said premises, as well as his unilateral withdrawal from the rights and obligations under the social rent contract, a claim for him to be recognised as having lost the right to the residential premises is subject to satisfaction on the basis of Part 3 of Article 83 of the HC RF in connection with the defendant having cancelled the social rent contract on his part.

The fact that an individual who voluntarily vacated residential premises and moved to another place of residence has no right to use residential premises under a social rent contract or an ownership title to residential premises at such new place of residence cannot in itself constitute grounds for the individual's absence from the disputed residential premises to be deemed temporary, since, in accordance with Part 2 of Article 1 of the HC RF, individuals exercise their housing rights at their own discretion and in their own interests. A person's intention to reject use of residential premises under a social rent contract may be confirmed by different evidence, including specific actions that, in aggregate, testify to such declaration of intent by an individual as a party to a rent contract for residential premises.

33. When considering cases connected with exchange of residential premises, courts should take account of the fact that, in accordance with Part 1 of Article 72 and Article 74 of the HC RF, only residential premises provided to citizens under a social rent contract can constitute the subject-matter

of an agreement on exchange of residential premises, whereas the tenants of social housing are the parties to such an agreement. The Housing Code of the Russian Federation does not provide for exchange of residential premises included in the social use stock for residential premises of the individual, specialised and commercial use housing stock ("mixed" exchange) or exchange by a family member of the tenant under a social rent contract of his share in the area of the residential premises with another person on the condition of his settlement thereon as a family member of the tenant ("family" exchange).

Proceeding from the provisions of Article 5 of the Introductory Law, the restrictions in relation to the subject-matter and parties to an agreement on exchange of residential premises also apply to residential premises provided to citizens under a social rent contract before 1 March 2005.

With respect to cases of the given category, it should also be kept in mind that the procedure and conditions for the tenant and his family members to exercise their right to exchange their residential premises are determined in Articles 72–74 of the HC RF. Violation thereof may serve as grounds for the exchange of residential premises being invalidated (Part 1 of Article 75 of the HC RF). A court may also recognise an exchange as invalid on the grounds established by the civil legislation on invalidating transactions (for example, factiousness of the exchange, performance thereof under the influence of fraud, as a consequence of being misled).

34. A mandatory condition for exchange of residential premises occupied under a social rent contract consists in the tenant obtaining the written consent of all the family members cohabiting with him, including those who are temporarily absent, as well as of the landlord (Part 1 of Article 72 of the HC RF) and, if some of the residents are minors, people without or with limited legal capacity that are family members of the tenant, such consent from the guardianship and wardship authorities. In accordance with Part 4 of Article 74 of the HC RF, the landlord is entitled to refuse his consent to exchange of the residential premises only in cases envisaged by Article 73 of the HC RF and Part 5 of Article 72 of the HC RF, which require observance of the standard for the per capita floor space for each new occupant as a result of an exchange of a family member.

The tenant and his family members may challenge refusal by the landlord to consent to exchange of residential premises in court, according to the rules governing the claims procedure.

According to the rules governing the claims procedure, cases based on claims by persons living together with the tenant family members for enforced exchange of the residential premises (Part 3 of Article 72 of the HC RF) may also be considered and decided if agreement on the exchange cannot be reached by the tenant and his family members.

Whereat arguments and the interests of residents of the premises to be exchanged that are deserving of attention and should be taken into account by the court when resolving such cases should be understood as circumstances impeding them, by virtue of age, state of health, place of work or study and the like, in using the residential premises offered for exchange. If a dispute on exchange arises between former family members occupying a separate apartment, refusal by one of several of them to move to residential premises located in a communal flat does not, in itself, constitute grounds for dismissing the claim, since in the event of collapse of a family entailing the need for the exchange, the given persons already do not, in fact, occupy a separate apartment.

35. Courts should bear in mind that cancellation of a social rent contract for residential premises and eviction of citizens therefrom at the demand of the landlord or state or local government bodies, as follows from the provisions of Part 4 of Article 3 of the HC RF, are possible only on the grounds and in the manner established by the Housing Code of the Russian Federation (Articles 29, 83, 85–91 of the HC RF).

Proceeding from the content of Provision 3 of Article 672 of the CC RF, the provisions of the Civil Code of the Russian Federation may not be applied to relations with respect to cancellation and termination of a social rent contract.

36. When accepting a statement of claim for eviction of individuals from residential premises occupied thereby under a social rent contract, with provision of other comfortable residential premises (Article 85 of the HC RF) or alternative accommodation (Article 90 of the HC RF) under social rent contracts, the judge should verify whether the claim specifies particular premises unencumbered by rights of other parties to which the residents may be moved. In the absence thereof, in accordance with Article 136 of the CPC RF, the judge issues a ruling on discontinuance of the claim, to which effect the claimant is notified and given a reasonable period for remedying the defect in the claim. Should the

given requirement not be fulfilled, the claim is deemed not to have been filed and is returned to the claimant.

37. On cases relating to eviction of individuals to other comfortable residential premises on the grounds specified by Articles 86–88 of the HC RF, i.e., in connection with the impossibility of using the residential premises for their designated purposes (the building in which the residential premises are located is subject to demolition; the residential premises are to be recategorised as non-residential premises; the residential premises are classed as unfit for habitation; as a result of reconstruction or complete overhaul of the residential building, the premises are eliminated or reduced in size, as a result of which the occupants may be recognised as in need of housing (Article 51 of the HC RF), or increased in size, as a result of which the total area of the residential premises per family member substantially exceeds the provision standard (Article 50 of the HC RF)), the courts should take into consideration the fact that provision of alternative accommodation to citizens under a social rent contract should meet the requirements of Article 89 of the HC RF: it should be comfortable in relation to the conditions in the relevant population centre, equal in area to the previously occupied premises, meet the set requirements and be located within the boundaries of the given population centre. If the tenant and his family members occupied an apartment or room(s) in a communal apartment, they are provided with an apartment or residential premises consisting of the same number of rooms in a communal apartment.

The court should verify whether the residential premises provided to the evicted citizens have all the conveniences standard required in the given population centre, bearing in mind, above all, the comfort standards of residential premises of the state and municipal housing stock in this population centre and ensuring that the evicted persons will not suffer a deterioration in their living conditions. Whereat lack of amenities on the residential premises from which an individual is evicted and (or) absence thereon of utilities do not constitute grounds for providing residential premises thereto that do not meet the requirements of Article 89 of the HC RF.

Account should be taken of the fact that the general requirements on the amenities available on residential premises are determined in the Regulations on recognition of premises as residential, of residential premises as unfit for habitation and of an apartment block as dangerous and subject to demolition or reconstruction, approved by decree of the Government of the Russian Federation of 28

January 2006 No. 47. These requirements are binding and may not be lowered by constituent entities of the Russian Federation and municipalities.

Courts should also keep in mind that, when individuals are evicted from residential premises on the grounds listed in Articles 86–88 of the HC RF, other comfortable residential premises, equivalent in area to those previously occupied, are not provided to citizens under a social rent contract in connection with improvement of their living conditions, so other circumstances (specified, for example, in Part 5 of Article 57, Article 58 of the HC RF) taken into consideration when residential premises are provided to people on the housing list are not taken into account. At the same time, people who are evicted and consequently receive other equivalent residential premises, retain the right to remain on the housing list, unless the relevant grounds no longer exist (Article 55 of the HC RF).

When satisfying a claim for eviction of an individual from residential premises on the grounds specified by Articles 86–88 of the HC RF, in the resolutive part of the court decision, the court should indicate the particular comfortable residential premises granted under a social rent contract to the evicted citizen.

38. When considering a claim by a landlord for cancellation of a social rent contract for residential premises and eviction of the tenant and family members living with him, with provision thereto of alternative accommodation under a social rent contract in connection with failure to pay the rent and the utilities for over six months without good reason (Provision 1 Part 4 of Article 83, Article 90 of the HC RF), the court should establish the reasons for which and the period during which the tenant and his family members (legally capable or with legal capacity restricted by a court) failed to fulfil their obligation to pay for the residential premises and utilities.

When deciding the given dispute, courts should proceed from the fact that, by the meaning of Provision 1 Part 4 of Article 83 and of Article 90 of the HC RF, the circumstance of legal significance is that the tenant and his family members have failed to make the given payments for over six months in a row.

The court might consider the following as good reasons for the tenant and his family members not to make payments for residential premises and utilities: protracted delay in salary or pension payment; difficult material position of the tenant and the legally capable family members in connection with loss

of work and impossibility of finding a new job, despite taking steps to do so; sickness of the tenant and (or) family members; presence in the family of disabled people, underage children and so on.

A claim may not be satisfied if the court concludes that there are good reasons for the tenant and his family members not to have paid for the residential premises and utilities for over six consecutive months.

The resolutive part of the court decision on cancellation of a social rent contract and eviction of a tenant and family members on the grounds envisaged by Article 90 of the HC RF should specify the precise other residential premises provided under a social rent contract to an evicted tenant and his family members.

The alternative accommodation provided should be separate, fit for permanent habitation (Part 2 of Article 15 of the HC RF), have a floor space of at least six square metres to person (Articles 90 and 105 of the HC RF), be located in the same population centre and be part of the social use housing stock.

39. In accordance with Part 1 of Article 91 of the HC RF, the tenant and (or) his cohabiting family members may be evicted by a court from the residential premises at the demand of the landlord or other interested persons without being provided with alternative residential premises if they do not use the residential premises for their designated purposes, systematically violate the rights and legitimate interests of neighbours or do not take care of the residential premises, allowing their condition to deteriorate.

In such cases, the interested persons entitled to file a court claim for eviction of a tenant and (or) family members from residential premises include those whose rights are violated by the unlawful actions of the tenant and (or) his cohabiting family members (for example, neighbours in the same building or communal flat).

Also entitled to file a court claim for eviction of a tenant and (or) his family members are state housing inspectorate bodies exercising control over use of the housing stock and observance of the rules for use of residential premises.

When deciding on a case regarding eviction of a tenant and (or) family members cohabiting with him from residential premises without provision of alternative accommodation on the grounds specified by Part 1 of Article 91 of the HC RF, the courts should proceed from the fact that such eviction is an extreme sanction and possible only if it is established that the tenant and (or) his family members systematically committed unlawful, culpable actions, and that, despite warnings from the landlord in any form (verbal or written) concerning the need to eliminate the given violations, did not do so.

Use of residential premises other than for their designated purpose should be understood, proceeding from the provisions of Parts 1–3 of Article 17 of the HC RF, as use of the residential premises not for habitation by individuals but for other purposes (such as their use for offices, warehouses, location of industrial production, maintenance and breeding of animals), i.e., the residential premises are, in fact, converted into non-residential premises. At the same time, account should be taken of the fact that, by law (Part 2 of Article 17 of the HC RF), residential premises may be used for performance of professional activities (for example, scientific, creative, attorney's and so on) or individual enterprise without converting them into non-residential, by their lawful occupants (including under a social rent contract), but on the condition that this does not violate the rights and legitimate interests of other individuals, as well as the requirements to be met by residential premises (fire safety, sanitary and hygiene and so on).

Systematic violation of the rights and legitimate interests of neighbours by a tenant and (or) his family members includes, in consideration of the provisions of Part 2 of Article 1 and Part 4 of Article 17 of the HC RF, regular, repeat actions in using the residential premises without observing the rights and legitimate interests of the occupants of the given residential premises or building without observing the requirements of fire safety, sanitary and hygiene, environmental and other requirements of the legislation, the rules for using residential premises (for example, listening to music, using a television set or playing musical instruments at night louder than permitted; performing repair and construction work or doing other things disturbing the neighbours' peace and quiet at night; violation of the rules on keeping household pets; disruptive behaviour towards neighbours and so on).

If such acts are committed by a former family member of the tenant, since he and the tenant, as well as family members residing on the same premises, in fact become neighbours in relation to one another, interested person are entitled to apply for eviction of the former family member of the tenant from the

residential premises without provision of alternative accommodation on the basis of Part 1 of Article 91 of the HC RF.

Systematic failure to take care of residential premises, leading to their destruction, should be understood as regular, deliberate actions on the part of the tenant and (or) his family members causing damage to or destroying structural elements of an apartment (windows, doors, floors, walls, plumbing fixtures and the like).

Bearing in mind that the landlord is entitled to set the tenant and his family members a reasonable time to eliminate the destruction of the residential premises caused by their actions (Part 1 of Article 91 of the HC RF), during consideration of a case on eviction, the court should verify whether the landlord set such a deadline and whether the tenant and his family members took any steps to remedy these violations (to make the residential premises fit for permanent habitation).

40. On cases relating to eviction from residential premises of individuals deprived of parental rights without providing them with alternative accommodation (Part 2 of Article 91 of the HC RF), it should be borne in mind that a claim for eviction should be satisfied if, during the litigation, the court concludes that it is impossible for these individuals to live together with the children in relation to whom they have been deprived of their parental rights.

Guardianship and wardship authorities, a guardian or foster parent, public prosecutor or a parent not deprived of parental rights may file a claim for eviction of parents deprived of parental rights from the residential premises.

Renting of specialised residential premises

41. When applying the provisions of the Housing Code of the Russian Federation concerning a rent contract for specialised residential premises, courts should consider the following:

a) specialised residential premises that may be the subject of a rent contract include: service accommodation, residential premises in hostels, residential premises of the interim housing stock, residential premises for temporary accommodation of force migrants, residential premises for

temporary accommodation of persons granted refugee status, residential premises in social service system accommodation.

Residential premises of the state and municipal housing stock are used as specialised accommodation (Part 2 of Article 92 of the HC RF). Articles 92–98 of the HC RF give an exhaustive list and the purpose of specialised residential premises and the categories of people for whose temporary accommodation they are intended.

Use of residential premises as specialised accommodation, with the exception of instances envisaged by federal laws, is permitted only after they have been included in the specialised housing stock by decision of the body that manages the state or municipal housing stock, in accordance with the established procedure and the requirements (Part 2 of Article 90 of the HC RF) currently determined by the Rules for including residential premises in the specialised housing stock, approved by decree of the Government of the Russian Federation of 26 January 2006 No. 42.

The question as to whether specific residential premises are specialised (in particular, official accommodation, hostels, temporary housing for forced migrants or refugees), is decided by virtue of Article 5 of the Introductory Law, proceeding from the provisions of the legislation in effect at the time the given residential premises are provided;

b) after 1 March 2005, the grounds for concluding a rent contract for particular specialised residential premises giving entitlement to occupy and live on residential premises consist, in accordance with Article 99 of the HC RF, in a decision of the owner of such residential premises or the authorised state body or authorised local government body acting in his name or other person authorised thereby (such as the administration of a state unitary enterprise, state or municipal institution) to grant specialised residential premises to a person lacking accommodation in the relevant population centre. Model rent contracts for specialised residential premises were approved by decree of the Government of the Russian Federation of 26 January 2006 No. 42.

At the same time, it should be borne in mind that, under the legislation in effect until 1 March 2005, the grounds for occupying official residential premises and concluding a rent contract for them consisted in an order of a set format (Articles 47 and 105 of the HC RSFSR), whereas the grounds for

residing in a hostel consisted in an order in a set format on renting living space in a hostel (Article 109 of the HC RSFSR);

c) violation of the requirements of the Housing Code of the Russian Federation and the Rules for including residential premises in the specialised housing stock when deciding on providing a citizen with specialised residential premises might, in consideration of the provisions of Provision 2 Part 3 of Article 11 of the HC RF and Part 2 of Article 99 of the HC RF, serve as grounds for interested parties filing court claims for this decision and the rent contract for specialised residential premises concluded on its basis to be recognised as invalid and for the residents to be evicted.

Claims for invalidation of a decision to provide someone with specialised residential premises and the rent contract for the specialised residential premises concluded on its basis should be resolved proceeding from analogy of law (Part 1 of Article 7 of the HC RF) with respect to the rules established by Article 168 of the CC RF concerning invalidity of transactions that do not comply with the law or other legal acts. The same applies to Provision 1 of Article 181 of the CC RF, providing for a three-year time-limit for claiming application of the consequences of invalidity of a null and void transaction, running from the day when fulfilment of this transaction begins.

A decision on provision of specialised residential premises and, accordingly, the rent contract for the specialised residential premises may be recognised as invalid if it is established that the requirements on the format and procedure for adopting the given procedure have been violated or if there are none of the requisite grounds for concluding a rent contract for the specialised residential premises (for example, an individual submits incorrect information on having concluded an employment contract or having been appointed to a position, the individual has other accommodation in the given population centre or does not belong, by law, to the categories of people entitled to receive specialised residential premises);

d) in consideration of the protracted nature of relations with respect to use of specialised residential premises that arose before the Housing Code of the Russian Federation came into effect, the rules of the Housing Code of the Russian Federation are applied to them, with the exception of instances envisaged by the Introductory Law (Article 5 of the Introductory Law);

e) a rent contract for specialised residential premises specified the family members of the tenant (Part 6 of Article 100 of the HC RF). Bearing in mind that model rent contracts for specialised residential premises entitle the tenant to use the residential premises together with his family members, he has the right to settle other persons on such premises as members of his family (for example, spouse, children, parents) in observance of the requirements established by Article 70 of the HC RF;

f) family members of the tenant of specialised residential premises, with the exception of official residential premises, have equal rights and obligations with the tenant under the contract (Part 5 of Article 100, Part 3, 4 of Article 67, Article 69 of the HC RF).

In accordance with Part 5 of Article 100 and by Parts 2–4 of Article 31 of the HC RF, the family members of the tenant of official residential premises have equal rights with the tenant to use the residential premises, unless otherwise was established by agreement between them. In the event of termination of family relations between the tenant of the official residential premises and a member of his family, the right to use the official residential premises is not, as a general rule, retained by the former family member of the tenant (Part 4 of Article 31 of the HC RF). The former family member of the tenant of official residential premises may, however, retain this right by court order for a certain time, on the grounds specified Part 4 of Article 31 of the HC RF.

42. In accordance with Part 1 of Article 103 of the HC RF, in cases of cancellation or termination of a rent contract for specialised residential premises, individuals should vacate the residential premises they occupied thereunder. In the event of refusal to vacate such residential premises, the given individuals are to be evicted by the court without being provided with alternative accommodation, with the exception of instances envisaged by Part 2 of Article 102 and Part 2 of Article 103 of the HC RF.

In this connection, on cases relating to eviction from specialised residential premises (Article 103 of the HC RF), courts should bear in mind that the individuals listed in Provisions 1–4 Part 2 of Article 103 of the HC RF may not be evicted from official residential premises or hostel accommodation without being provided with alternative accommodation, on the condition that they are not the tenants of residential premises under social rent contracts or family members of the tenant of residential

premises under a social rent contract or owners of residential premises or family members of the owner of residential premises and are on the housing list.

The alternative accommodation provided to citizens evicted from official residential premises or accommodation in hostels should be located within the boundaries of the relevant population centre (Part 3 of Article 103 of the HC RF), meet the sanitary and technical requirements (Part 2 Article 15 of the HC RF) and, as follows from the content of Part 2 of Article 103 of the HC RF, constitute part of the social housing stock. The availability of amenities and the area of the alternative accommodation are not of legal significance.

43. Courts should take into account the fact that Article 13 of the Introductory Law provides additional guarantees to residents of official residential premises and accommodation in hostels provided to them before the Housing Code of the Russian Federation came into effect. In accordance with the given article, such people who are on the housing list waiting for accommodation provided under social rent contracts (Part 1 of Article 51 of the HC RF), or entitled to be on the given list (Part 2 of Article 52 of the HC RF) may not be evicted from official residential premises or hostel accommodation without being provided with alternative accommodation if their eviction was not permitted by law before the Housing Code of the Russian Federation came into effect. The categories of citizens who could be evicted from official residential premises and hostels with provision of alternative accommodation were determined by Articles 108 and 110 of the HC RSFSR.

44. In connection with the adoption of this ruling, to recognise as vitiated Provision 13 of ruling of the Plenary Session of the Supreme Court of the Russian Federation of 24 August 1993 No. 8 “On Certain Issues of Application by courts of the Law of the Russian Federation ‘On Privatisation of the Housing Stock in the Russian Federation’” as amended by rulings of the Plenary Session of 21 December 1993 No. 11 and of 25 October 1996 No. 10, with amendments and supplements introduced by ruling of the Plenary Session of 6 February 2007 No. 6.

Ruling of the Plenary Session of the Supreme Court of the Russian Federation of 15 June 2010 No. 16 Moscow "On the Practice of Application by courts of the Law of the Russian Federation 'On the Media'"

According to Article 29 of the Constitution of the Russian Federation, every person has the right freely to seek, receive, transmit, produce and distribute information by any lawful means. No-one may be compelled to express their opinions or beliefs or to reject them. Everyone is guaranteed freedom of thought and of speech, freedom of the media. Censorship is prohibited.

In accordance with Provision 1 of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, every person has the right to express their opinion freely. This right includes freedom to hold their own opinion and freedom to receive and disseminate information and ideas without any interference on the part of the public authorities and irrespective of state borders.

Freedom of expression of opinions and beliefs and freedom of the media constitute the foundations for the development of modern society and a democratic state.

At the same time, exercise of the given rights and freedoms may be accompanied by certain limitations determined by law and necessary in a democratic society.

The Constitution of the Russian Federation prohibits propaganda and advocacy of social, ethnic, national or religious hatred and animosity, as well as propaganda of social, ethnic, national, religious or linguistic supremacy (Article 29). The Law of the Russian Federation "On the Media" prohibits abuse of freedom of the media.

When applying the legislation regulating questions of freedom of speech and freedom of the media, the court should ensure a balance between the rights and freedoms guaranteed by Article 29 of the Constitution of the Russian Federation, on the one hand, and on the other human and civil rights and freedoms, as well as the values protected by the Constitution of the Russian Federation.

For the purposes of ensuring correct and unified application of the legislation relating to freedom of the media and resolving issues arising for courts in applying the Law of the Russian Federation "On the Media", the Plenary Session of the Supreme Court of the Russian Federation, guided by Article

126 of the Constitution of the Russian Federation resolves to provide courts with the following clarifications:

1. Relations with respect to freedom of speech and of freedom of the media are legally regulated by federal laws, including “On the Media”, “On Access to Information on the Activities of State Bodies and Local Government Bodies”, “On Access to Information on the Activities of Courts in the Russian Federation”, “On Guarantees of Equality of Parliamentary Parties in Coverage of Their Activities by State Public Television Channels and Radio Channels”, “On the Manner of Coverage of the Activities of State Authorities in the State Media”, “On Advertising”, “On a State of Emergency”, “On Martial Law”, “On Combating Terrorism”, “On Combating Extremist Activities”, “On the Fundamental Guarantees of Voting Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, “On a Referendum in the Russian Federation”, “On Presidential Elections in the Russian Federation”, “On Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation”, as well as other regulatory and legal acts adopted in the established manner.

2. The international acts that regulate questions of freedom of speech and of the media and are binding on the Russian Federation by virtue of Part 4 of Article 15 of the Constitution of the Russian Federation include, in particular, the International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, Helsinki Accords and the Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms.

3. When resolving cases connected with the activities of the media, it should be borne in mind that exercise of freedom expression and freedom of the media imposes special obligations and special responsibility and may be accompanied by certain limitations determined by law and necessary in a democratic society for respect of the rights and reputation of others, protection of state security and public order, prevention of disorder and crime, protection of health and morality, prevention of dissemination of information received as confidential, securing of the authority and impartiality of justice (Article 29 the Universal Declaration of Human Rights, Provision 3 of Article 19 and Article 20 the International Covenant on Economic, Social and Cultural Rights, Provision 2 of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 29 and 55 of the Constitution of the Russian Federation).

The provisions of Part 3 of Article 55 of the Constitution of the Russian Federation state that human and civil rights and freedoms may be limited by federal law only to the extent required for protecting the foundations of the constitutional system of morality, health, rights and legitimate interests other persons and securing defence of the country and national security.

In consideration of this, when considering the question of limitations in relation to persons engaged in production and distribution of the media and when deciding on whether to hold such persons liable, courts should determine whether these limitations are established by federal law.

4. When applying the Law of the Russian Federation "On the Media", courts should bear in mind any amendments to the legislation of the Russian Federation since this Law came into effect (8 February 1992), in particular, recognition and guarantees in the Russian Federation of local government, which ensures that matters of local significance are decided independently by the populace and whose bodies do not belong within the system of state authorities (Article 12, Part 1 of Article 130 of the Constitution of the Russian Federation, Article 1 of the Federal Law "On the General Principles of Organising Legislative (Representative) and Executive State Authorities of Constituent Entities of the Russian Federation", Article 1 of the Federal Law "On the General Principles of Organising Local Government in the Russian Federation").

Consequently, the provisions of the Law of the Russian Federation "On the Media" referring to state bodies (for example, Part 1 of Article 3, Part 1 of Article 7, Part 4 of Article 18, Part 5 of Article 19, Part 1 of Article 25, Part 2 of Article 35, Provision 2 Part 1 of Article 47, Article 56, Provisions 3 and 4 Part 1 of Article 57, Part 1 of Article 58, Provision 3 Part 1 of Article 61) should be understood as relating not only to state authorities and other state bodies, but also local government bodies.

When applying the provisions of Provision 4 Part 1 of Article 57 of the given Law, the courts should, in particular, take into consideration the fact that these rules apply to literal reproduction of fragments of speeches by members of elected state authorities and local government.

5. Proceeding from the provisions of Article 2 of the Law of the Russian Federation "On the Media", periodical distribution of media means at least annual distribution of a set of announcements and materials intended for the general public. The term media is understood to mean the form of periodical

distribution of mass information, including periodical printed publications, radio and television programmes.

In consideration of this, media themselves cannot have any rights and obligations and, accordingly, do not constitute a person participating in a case (Article 34 of the CPC RF).

By virtue of Article 2.1 § 9 and Part 1 of Article 8 of the Law of the Russian Federation "On the Media", in order for an editorial board to produce and bring out media, the latter must undergo state registration. Exceptions apply when media are released from the need to undergo state registration are listed in Article 12 of this Law.

If, when resolving a case on protection of rights and freedoms of an individual, it is established that these rights and freedoms have been violated by distribution of announcements and materials in media that, in breach of the requirements of the Law of the Russian Federation "On the Media", have not undergone state registration, the court is entitled require the defendant to refute, at its own cost, or to pay for publication of the claimants response in another media.

6. Periodical distribution of media may be by telecommunications networks (information and telecommunications networks), including the Internet. When considering cases relating to distribution of the media via such networks, courts should take into account the following.

In accordance with Part 2 of Article 24 of the Law of the Russian Federation "On the Media", the rules established by the given Law for radio- and television programmes are applied in relation to periodical distribution of media via the teletext and videotext systems and other telecommunications networks, unless the legislation of the Russian Federation establishes otherwise.

The provisions of the Law of the Russian Federation "On the Media" may be applied to these relations only in consideration of the specifics of distribution of information via such networks (for example, absence of the media output specified in Article 2.1 § 6 of this – a print-run or part of a print-run of an individual issue of a printed periodical, an individual radio- or television programme broadcast, a pressing or part of pressing of an audio- or video recording of a programme). Account should be taken of the fact that anyone may access announcements and images constituting the content of an Internet

site from anywhere and at any time, at their choice, providing they have the relevant hardware and an Internet connection.

By virtue of Articles 8, 10 and 11 of the given Law, questions relating to state registration of media depend on distribution of the media output. Since, when media are distributed on the Internet, there is no media output, under the effective legislation, Internet sites are not subject to mandatory registration as media. This means it is impossible to hold persons distributing media via Internet sites liable for manufacture or distribution of unregistered media output.

Persons that violate the legislation when distributing media via Internet sites not registered as media bear criminal, administrative, civil law and other liability in accordance with the legislation of the Russian Federation without consideration of the specifics envisaged by the legislation on the media.

According to Article 1 of the Law of the Russian Federation "On the Media", freedom of the media includes the right of any person to found media in any form not prohibited by law. Creation of Internet sites and their use for periodical distribution of media is not legislatively prohibited. In consideration of this and proceeding from the exhaustive list established by Part 1 of Article 13 of the given Law of grounds for refusing state registration of media, the registration body is not entitled to refuse to register Internet sites as media, if its founder wishes to have it registered.

Article 27 of the Law of the Russian Federation "On the Media" provides for mandatory specification of imprint details. In consideration of the specifics of circulation of information in the imprint details of an Internet site registered as a media resource, in particular, the registering body and registration number should be specified. Absence of these details may serve as grounds for holding persons responsible for periodical distribution of the media via Internet sites registered as media liable for violating the procedure for declaring media imprint details.

A broadcast licence is necessary if use is made of terrestrial, wire or cable, television and radio broadcasting equipment for circulating media output (Article 31 of the Law of the Russian Federation "On the Media"). Since such equipment is not used to distribute media via Internet sites, no licence is required for this.

When considering cases connected with distribution of the media via telecommunications networks (including via Internet sites), courts should bear in mind that the provisions of Part 2 of Article 24 of the Law of the Russian Federation "On the Media" apply to these cases only in relation to the rules of the given Law relating to radio- and television programmes. In particular, this means that the rules governing distribution of advertising on television and radio programmes, as established by the Federal Law "On Advertising", do not apply to Internet sites. At the same time, the general rules established by this Federal Law for distribution of advertising in the media are subject to application to Internet sites registered as media, in consideration of the specifics of information distribution via such networks.

7. The federal laws do not impose any limitations on the means for proving the fact of information distribution via telecommunications networks (including via Internet sites). Consequently, when resolving the question as to whether such distribution has taken place, by virtue of Articles 55 and 60 of the CPC RF, the court is entitled to accept any evidence provided for by the civil procedural legislation.

The Civil Procedure Code of the Russian Federation and Part 2 of Article 102 of the Fundamentals of the legislation of the Russian Federation on notaries do not allow a notary to provide evidence on cases being heard by a court. However, by virtue of Part 1 of Article 102 of the Fundamentals of the legislation of the Russian Federation on notaries, until a civil case is launched in court, a notary may provide evidence required for the case (including by certifying Internet site content at a particular time), if there is reason to believe that it will subsequently become impossible or difficult to provide such evidence.

On cases connected with distribution of information via telecommunications networks, the possibility is not excluded of judges providing evidence, since the range of evidence that may be provided is not limited by law (Articles 64–66 of the CPC RF). The question of the need to provide evidence is decided in consideration of the information stated in the relevant application, including information on the content of the case under consideration, on the evidence required, on the circumstances to be proven by such evidence, as well as on the reasons prompting the applicant to request provision of evidence (Part 1 of Article 65 of the CPC RF).

In urgent cases, when preparing the case for judicial proceedings and during the litigation on the case, the court (judge) is entitled, in accordance with Provision 10 Part 1 of Article 150 and Article 184 of the CPC RF, to inspect evidence in loco (in particular, to look through information posted on a specific telecommunications network resource in real time). Evidence is viewed and studied in the manner envisaged by Articles 58 and 184 of the CPC RF: with notification of the participants in the case, the results of the inspections being secured in a protocol, with witnesses and specialists being summoned when necessary, etc.

In the event that, during consideration of the case, questions arise that are connected, for example, with the specifics of the process of information dissemination via telecommunications networks and require special knowledge in this sphere, in accordance with Article 79 of the CPC RF, the judge is entitled to appoint an expert review.

In cases when it is necessary to obtain consultations, clarifications and immediate technical assistance in viewing evidence, reproducing a recording, appointing an expert review and taking steps to secure evidence, a specialist may be engaged on the case (Part 1 of Article 188 of the CPC RF).

8. Proceeding from the provisions of the Law of the Russian Federation "On the Media", media production and circulation includes founding media, producing and issuing media, producing media output and distributing this output.

In consideration of this question concerning the participants in a case relating to media production and circulation, courts should decide depending on the stage in media production and circulation that the relations under dispute arose and which persons, in accordance with the above Law, the charter of the editorial board and (or) agreements concluded in accordance with Articles 20 and 22 of the given Law, are entitled to conduct the given types of activity.

Whereat, account should be taken of the fact that the provisions of the Law of the Russian Federation "On the Media" allow for participation by one person at different stages in media production and circulation. Thus, a media founder may also be the editor, publisher or distributor; the editor may be the media founder, publisher or distributor; the publisher may be the media founder, editor or distributor (Part 5 of Article 18, Part 4 of Article 19 and Part 2 of Article 21 of the given Law).

When clarifying questions relating to the founder (co-founders) of a printed periodical, about its editor-in-chief, the address of the editorial board, founder, or printing works, the media imprint details that, in accordance with Article 27 of the Law of the Russian Federation "On the Media" should contain such information, must be borne in mind.

9. By virtue of the provisions of Articles 8, 11 and 18 of the Law of the Russian Federation "On the Media", the founder (co-founders) take a decision on creating a media resource and participate in organising editorial activities (in particular, by approving the charter of the editorial board and (or) concluding an agreement with the media editors (editor-in-chief). Proceeding from this, when considering claims deriving from such relations, the media founder (co-founders) may be involved in the case.

According to Part 2 of Article 18 of the given Law, the founder is entitled to require the editors to place an announcement or material in its name (founder's statement). In consideration of this, the proper defendant in cases relating to a founder's statement is the founder (co-founders), but if the announcement or material is not identified as being from the founder, also the media editorial board.

In the event of liquidation or reorganisation of a legal entity or abolition of a state authority, another state or local government body that is a media founder, instead of the founders, the media editorial board may be involved in the case in accordance with Part 4 of Article 18 of the Law of the Russian Federation "On the Media", unless the editorial charter envisages otherwise.

In the event of the death of a founder who is a natural person, proceeding from Provision 1 of Article 6 of the CC RF, the provisions of Part 4 of Article 18 of the given Law, the media editorial board may also be involved in the case unless the editorial charter specifies a person(s) that inherits the rights and obligations of the deceased founder in the event of the latter's death.

10. When resolving cases disputing refusal to register a media resource, it should be kept in mind that Part 1 of Article 13 of the Law of the Russian Federation "On the Media" gives an exhaustive list of grounds for such a refusal. Registration of a media resource may not be refused on the grounds that the given media are released from state registration by virtue of Article 12 of the given Law (for example, when the founder of a printed periodical with a circulation of fewer than one thousand copies expresses a wish to received registration as a media resource).

When applying the provisions of Provisions 2 and 3 Part 1 of Article 13 of the given Law, account should be taken of the following. The main function of a name of a media resource consists in identifying it for the audience and potential consumers on the media market. Consequently, the media's name is not subject to evaluation from the perspective of whether it does or does not comply with reality. A refusal to register a media resource because its name does not comply with reality is unlawful.

A media name may be assess from the point of view of abuse of freedom of the media in the sense of Part 1 of Article 4 of the Law of the Russian Federation "On the Media" or absence of such abuse. For instance, the name of a media resource may not contain calls to perform acts of terrorism, advertise pornography, the cult of violence of cruelty.

When resolving cases disputing refusal to register a media resource on the grounds specified in Provision 4 Part 1 of Article 13 of the Law of the Russian Federation "On the Media" (when the body registering the media previously registered another media resource with the same name and form distribution), the following should be borne in mind.

Law of the Russian Federation "On the Media" proceeds from the fact that media under the same name is understood as a name complying literally with one registered previously. Refusal of registration on the grounds that a media name to be registered is confusingly similar to one registered previously may not be deemed lawful.

Since the main purpose of a media name is to distinguish it from other media, use of confusingly similar names might confuse consumers (the audience) concerning the media output. In this case, the rights of persons entitled to a media name are protected in the manner specified by the effective legislation.

When comparing the forms of circulation of media, account should be taken of the fact that a periodical printed edition, radio-, television- or video-programme and documentary film constitute different forms of media distribution. At the same time, a newspaper, journal, collection, almanac and bulletin are different types of a single form of media distribution – printed periodicals (Article 2.1 §§ 3–4 of the Law of the Russian Federation "On the Media").

11. When resolving cases on recognising certificates of media registration as invalid, it should be borne in mind that an exhaustive list of grounds for this is given in Article 15 of the Law of the Russian Federation "On the Media". The grounds specified in Part 5 of Article 8 of the given Law (the founder did not launch production of the media output within a year of the registration certificate being issued) constitute a partial case of the grounds envisaged in Provision 2 Part 1 of Article 15(the media resource does not come out (is not broadcast) for over a year).

12. According to Article 2.1 § 9 of the Law of the Russian Federation "On the Media", it is the media editorial board, which may consist of one or several persons, that produces and brings out the media. The editorial board conducts its activities on the basis of professional independence (Part 1 of Article 19 of the Law of the Russian Federation "On the Media"). In consideration of this, if the relations that have arisen relate to production and issue of media (including the content of the disseminated announcements and materials) the media editorial board may be involved in the case. If the media editorial board is neither an individual nor a legal entity, it is the media founder and the editor-in-chief that may be involved in the case

Since terminating media activities invalidates the certificate of registration and editorial charter (Part 6 of Article 16 of the Law of the Russian Federation "On the Media"), a decision on termination of media activities affects the rights and interests not only of the founder (co-founders) but also the editorial board, which, by virtue of Part 1 of Article 8 of the given Law, is entitled to produce and issue the media resource from the time of its registration. In consideration of this, the media founder (co-founders) and editorial board are involved in a case on termination of media activities.

When verifying the powers of representatives of the editorial board, it should be kept in mind that the editor-in-chief represents the editorial board in court without special formalisation of these powers, since this right of the editor-in-chief is based on the provisions of Part 5 of Article 19 of the Law of the Russian Federation "On the Media". The editor-in-chief is understood to be the person heading up the editorial board (no matter what his position is called) and taking final decisions in relation to production and use of the media (Article 2.1 § 10 of the Law of the Russian Federation "On the Media").

13. If the relations under dispute are connected with production of media output, the proper defendant by virtue of Article 2.1 § 12 of the Law of the Russian Federation "On the Media" is the publishing house providing the material and technical resources for production of the given output or a legal entity, individual entrepreneur or an individual equivalent to the publishing house but for which such activities do not constitute or serve as their main source of income.

If the filed claims relate to circulation of media output, the proper defendant by virtue of Article 2.1 § 13 of the Law "On the Media" is the distributor, i.e., the person distributing the output under an agreement with the editorial board, publisher or on other legal grounds.

At the same time, on cases deriving from the content of distributed information, neither the publisher nor the distributor is the proper defendant since, proceeding from the provisions of the Law of the Russian Federation "On the Media", these persons are not entitled to interfere in editorial affairs, when the content of announcements and materials is determined.

14. To draw the attention of courts the fact that, proceeding from the content of Part 1 of Article 3 of the Law of the Russian Federation "On the Media", censorship is defined as a demand by officials, state authorities, other state of local government bodies, organisations or public associations that the media editorial board or its representatives (in particular, the editor-in-chief or his deputy) agree announcements and materials in advance (unless the official is the author or interviewee) or a prohibition on distribution of announcements and materials, or individual parts thereof.

The requirement for mandatory preliminary agreement of materials or announcements may be legal if it comes from the editor-in-chief, being the person who bears liability for compliance with the requirements of the law by the content of the distributed materials and announcements. The legality of such a requirement by a media founder depends on whether this possibility is set forth in the editorial charter or other such agreement. In the absence of relevant provisions, any interference by the founder in the editorial board's professional independence and journalists' rights is unlawful.

A demand by an official addressed directly to a journalist to agree the text (transcript) of an interview with the give official may not be recognised as censorship (Part 1 of Article 3 of the Law of the Russian Federation "On the Media"). Whereat courts should take into account the fact that the interviewee is entitled to demand this but such prior agreement is not established as being mandatory.

If the author of an article, note or the like prepared on the basis of an interview is a journalist and not the interviewee, media may edit the original text of the interview to create the above works, provided the interviewee's meaning and words are not distorted.

If the author of an article, note or the like is the interviewee himself, a demand addressed directly to the editorial board or editor-in-chief to agree the given materials in advance cannot be deemed to be censorship, since such a demand is a form of exercise of the author's right to inviolability of a work and protection of a work against distortion, as provided for in Article 1266 of the CC RF.

According to Subprovision 4 of Provision 6 of Article 1259 of the CC RF, announcement of events and facts of an exclusively informational character (such as daily news bulletins) are not subject to copyright. In relation to such announcements, a demand for preliminary agreement is not permissible, other than in cases established by federal laws.

Prior provision of materials and announcements by media editorial boards to state authorities, other state or local government bodies, organisation, public associations or officials does not constitute censorship if the media editorial board (editor-in-chief) itself offers the material or announcement for an opinion for verifying the accuracy of the information received from the source (author), gathering additional information or obtaining a relevant comment.

It is not censorship when competent bodies and officials issue written warning to a founder, editorial board (editor-in-chief) in the event of abuse of freedom of the media (for example, in accordance with Article 16 of the Law of the Russian Federation "On the Media", Article 8 of the Federal Law "On Combating Extremism") or a court prohibits production and issue of media in cases established by federal laws for the purposes of preventing abuse of freedom of the media (for example, by Articles 16 and 16 [1] of the Law of the Russian Federation "On the Media", Article 11 of the Federal Law "On Combating Extremism").

Courts should bear in mind that, despite the general prohibition on censorship provided for in Article 29 of the Constitution of the Russian Federation, the provisions of its Articles 56 and 87 allow or restrictions on freedom of the media as a temporary measure during a state of emergency or martial law. In these cases, censorship may be introduced and exercised in the manner stipulated by the federal constitutional laws "On a State of Emergency" and "On Martial Law".

15. When resolving cases relating to gathering of information, it should be borne in mind that the choice of a legal means for gathering information is made by the journalist and editorial board itself, with the exception of instances specified directly by federal laws (for example, Part 4 of Article 4 of the Law of the Russian Federation "On the Media", Provision "b" of Article 12 of the Federal Constitutional Law "On a State of Emergency", Subprovision 14 of Provision 2 of Article 7 of the Federal Constitutional Law "On Martial Law").

One lawful method for seeking information on the activities of state authorities, other state and local government bodies, state and municipal organisations (commercial and otherwise), public associations and their officials is for the editorial board to request the relevant (Article 39 of the Law of the Russian Federation "On the Media").

Refusal to provide information requested by an editorial board or delay in doing so may be appealed (challenged) judicially (Provision 3 Part 1 of Article 61 of the Law of the Russian Federation "On the Media").

When applying the provisions of Articles 38–42 of this Law to cases of appeal against (challenge to) refusal to provide information or delay in doing so, courts should bear in mind that questions relating to provision of information on the activities bodies, organisations and public associations (including in response to editorial requests) may be regulated by other federal laws and regulatory and legal acts, if the possibility of such acts being adopted is provided for by the effective legislation (for example, by Parts 2 and 3 of Article 2 of the Federal Law "On Access to Information on the Activities of State and Local Government Bodies", Part 2 of Article 2 of the Federal Law "On Access to Information on the Activities of Courts in the Russian Federation").

The provisions of the Law of the Russian Federation "On the Media" do not require editorial boards to include in an information request the reasons for which the request is being made or to justify the need for the requested information.

A request for information may concern any aspects of the activities of the relevant body, organisation, public association or official and apply to information on incomes, property and liabilities of a property nature of state and municipal officials; the specifics of provision of such information are determined by regulatory and legal acts of the Russian Federation (Part 5 of Article 8 of the Federal

Law “On Combating Corruption”). For instance, the procedure for providing all-Russia media editorial boards with information for publication on the incomes, property and property liabilities of persons holding state positions of the Russian Federation, federal civil servants and their family members is approved by Order of the President of the Russian Federation of 18 May 2009 No. 561 (as subsequently amended).

If the requested information contains some constituting an official, commercial or other legally protected secret, refusal to provide such information is lawful by virtue of Part 1 of Article 40 of the given Law.

Special protection of secrets is mentioned, for example, in the following federal laws: “On Official Secrets”, “On Personal Data”, “On Commercial Secrecy”, “On Combating Terrorism” (Provision 10 of Article 2), “On Archiving in the Russian Federation” (Article 25), the Fundamentals of the legislation of the Russian Federation on public health (Article 61), “On Psychiatric Care and Guarantees of the Rights of Citizens During Its Provision” (Article 9), “On Preventing the Spread of Tuberculosis in the Russian Federation” (Provision 1 of Article 12), “On Advocacy and the Bar in the Russian Federation” (Article 8), “On Banks and Banking” (Article 26), the Family Code of the Russian Federation (Article 139) and the Tax Code of the Russian Federation (Article 102).

Other grounds excluding the possibility of providing information on the activities of bodies, organisations, public associations and officials (including, at the request of media editorial boards), may be specified by other federal laws (for example, Article 20 of the Federal Law “On Access to Information on the Activities of Courts in the Russian Federation”, Article 20 of the Federal Law “On Access to Information on the Activities of State and Local Government Bodies”).

By virtue of Part 2 of Article 40 of the Law of the Russian Federation “On the Media”, requested information should be provided within seven days. If it is not possible to provide such information within the given period, a notice is sent to the media editorial board stating the date on which the requested information will be provided. Whereat the given Law does not stipulate how long provision of information may be delayed. Moreover, courts should keep in mind that such a period is determined, in particular, by the Federal Law “On Access to Information on the Activities of State and Local Government Bodies”. According to Part 6 of Article 18 of this Law, the delay in providing

information on the activities of state or local government bodies may not exceed fifteen days beyond the deadline set by this Law for responding to a request.

The periods for considering and deciding cases involving recognition as unlawful a refusal to provide or delay in providing information requested by media are determined proceeding from the provisions of Article 154 and Part 1 of Article 257 of the CPC RF. At the same time, bearing in mind that, in accordance with Article 38 of the Law of the Russian Federation "On the Media", provision of information at the request of media editorial boards is one form in which the civil right is exercised to receive prompt information through the media on the activities of state and local government bodies, state and municipal organisations, public associations, their officials, and that, if the case hearing is protracted, the requested information might become outdated, the court should take steps to consider and decide such cases as soon as possible.

16. Courts should also keep in mind that Part 1 of Article 20 of the Federal Law "On Access to Information on the Activities of Courts in the Russian Federation" establishes grounds on which information on the activities of courts is not provided at the request of the user (including media editorial boards).

In addition, proceeding from the provisions of Part 2 of Article 20 of the given Law, provision of information on the activities of courts on the basis of a requeste may be refused if this information is published in the media or posted on official website of courts, the Judicial Department of the Supreme Court of the Russian Federation, administration (departments) of the Judicial Department in constituent entities of the Russian Federation.

Information, provision of which may be refused on the basis of Provision 5 Part 1 of Article 20 of the given Federal Law (the requested information is interference in the administration of justice) should be understood as information, distribution of which might impede fair trial, as guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (for example, it might entail violation of the principle of equality of the parties, the adversarial principle, the presumption of innocence and a reasonable duration of case hearings).

17. The court (judge) may not hamper media representatives in accessing court sessions (Part 1 of Article 12 of the Federal Law "On Access to Information on the Activities of Courts in the Russian

Federation") or covering the consideration of a specific case, with the exception of instances envisaged by law (for example, if the case is heard in camera or if media representatives are removed from the court for disrupting the court session (Article 159 of the CPC RF, Article 258 of the Criminal Procedure Code of the RF).

Whereat the procedure for citizens (individuals), including representatives of organisations (legal entities), public associations, state authorities and local government bodies to access courtrooms during court sessions or premises occupied by courts is established by the court regulations and (or) other acts regulating the internal activities of courts (Part 1 of Article 12 of the Federal Law "On Access to Information on the Activities of Courts in the Russian Federation").

A case (in total or part thereof) may be heard in camera only on the basis of a reasoned ruling or resolution by the court (judge) in cases specified by federal laws (Articles 10, 182 of the CPC RF, Part 1, 2 of Article 24.3 of the Code of Administrative Offences of the RF, Article 241 of the Criminal Procedure Code of the RF).

Whereat, in administering justice, courts should proceed from the fact that consideration of the case in camera on grounds not specified by federal laws contravenes the constitutional principle of open administrative of justice (Part 1 of Article 123 of the Constitution of the Russian Federation)and may be recognised as a violation of the right to a fair and public hearing, as envisaged by Provision 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Provision 1 of Article 14 the International Covenant on Economic, Social and Cultural Rights.

18. Proceeding from the provisions of Part 7 of Article 10 of the CPC RF, Part 3 of Article 24.3 of the Code of Administrative Offences of the RF and Part 5 of Article 241 of the Criminal Procedure Code of the RF, media representatives at an open court session have the right to write and make audio-recordings of the course of the proceedings. Whereat the given rules do not require the person making the audio-recording to notify the court to this effect or receive a permit to do so.

At the same time, since cine-recording and photographs, video-recording and broadcasting of a court session by radio and television is permitted only by decision of the court (judge) (Part 7 of Article 10 of the CPC RF, Part 3 of Article 24.3 of the Code of Administrative Offences of the RF, Part 5 of Article 241 of the Criminal Procedure Code of the RF), a media representative present at an open court

session shall, for the purposes of receiving a relevant decision, notify the court (judge) of his intention to make a cine-recording and photographs, video-recording and broadcasting of a court session by radio or television.

When deciding the question of the possibility and the manner of making cine-recordings and (or) photographs, video-recordings and broadcasts of a court session by radio and television, the court (judge) should proceed from relevant procedural rules (Part 7 of Article 10, Part 5 of Article 158 of the CPC RF, Part 3 of Article 24.3 of the Code of Administrative Offences of the RF, Part 5 of Article 241 of the Criminal Procedure Code of the RF), and from the need to ensure a balance of the rights of all to freely seek, receive, transfer, produce distribute information by any lawful means (Part 4 of Article 29 of the Constitution of the Russian Federation, Article 1 of the Law of the Russian Federation "On the Media") and the rights of all to inviolability of private life, personal and family privacy, protection of their honour and good name, secrecy of correspondence, telephone conversations, postal, telegraph and other communications (Article 23 of the Constitution of the Russian Federation), and protection of their images (Article 1521 of the CC RF).

19. Considering that open justice presupposes the need for the public to be broadly informed about the activities of the courts, courts should strive towards fuller use of the potential of the media for providing the users of information on the activities of courts with objective, correct and prompt information.

The official court media relations representative is the chairman of the court or an official duly authorised thereby (Part 1 of Article 22 of the Federal Law "On Access to Information on the Activities of Courts in the Russian Federation"). In addition, for the purposes of collaboration with media editorial boards, courts (with the exception of district courts, garrison military courts and Justices of the Peace) may establish relevant structural subdivision in their administration (Part 3 of Article 22 of the given Federal Law).

When furnishing information on their activities, courts should observe the requirements of the effective legislation on the manner, form and timelines for providing such information. Whereat it should be kept in mind that, in accordance with Provision 2 of Article 10 of the Law of the Russian Federation "On the Status of Judges in the Russian Federation", a judge is not required to give any

explanations (including to media representatives) on the merits of considered cases or ones in process or to provide them to any for acquainting themselves therewith, other than in cases and in the manner envisaged by the procedural law.

20. In accordance with Article 23 of the Federal Law "On Access to Information on the Activities of Courts in the Russian Federation", disputes connected with media coverage of the activities of courts are resolved by the court in the manner established by law. Disputes connected with media coverage of the activities of courts may also be resolved out of court by bodies and organisations whose terms of reference include consideration of information disputes.

Considering this, in the event of such a dispute arising, the possibility is excluded of addressing the Public Board for Complaints against the Press (hereinafter the Press Board) to resolve it since, by virtue of Provision 4.1 its Charter adopted on 14 July 2005, this Press Board considers information disputes primarily of a moral and ethical character arising in the media sphere. These include cases of violation of the principles and rules of professional journalistic ethic. The terms of reference of the Press Board also cover consideration of information disputes affecting human rights in the media sphere.

21. The lawful means for seeking and obtaining information for the purposes of subsequent production and distribution thereof to an unrestricted audience include the institution of accreditation of journalists (correspondents) envisaged by Article 48 of the Law of the Russian Federation "On the Media" and granting accredited journalists additional possibilities for seeking and obtaining information.

When resolving claims for recognising as unlawful the rules established by state authorities, other state or local government bodies and state and municipal organisations for accrediting journalists thereunder, for recognising as unlawful decisions on refusing accreditation of journalists, on depriving journalists of their accreditation or on violation of the rights of an accredited journalist, the following should be borne in mind.

By virtue of the provisions of Part 3 of Article 55 of the Constitution of the Russian Federation, restrictions on human and civil rights and freedoms (including freedom of speech) not established by federal law but other regulatory and legal acts may not be recognised as lawful.

The accreditation rules established by state authorities, other state or local government bodies, state and municipal organisations may not envisage restrictions on the rights and freedoms of accredited journalists other than those set by federal laws (for example, in the form of suspension of journalists' accreditation) and the conditions for their application; nor may they establish grounds in addition to those of Article 48 of the Law of the Russian Federation "On the Media", for refusing accreditation of journalists or for depriving journalists of accreditation. Whereat, account should be taken of the fact that, in the event of termination of the activities of a media resource, the accreditation of its journalists also terminates since, by virtue of Part 1 of the given article, the right to accreditation of journalists depends directly on whether the media editorial board performs activities.

For the purposes of fulfilling the obligation envisaged by Part 3 of Article 48 of the Law of the Russian Federation "On the Media" to notify journalists in advance of sessions, meetings and other events, accreditation bodies, organisations and public associations should have at their disposal certain details of a personal nature in relation to each accredited journalist (in particular, their addresses and telephone numbers). In consideration of this, the provisions of the rules for accreditation of journalists requiring that information needed for communication purposes be furnished comply with the provisions of the Law of the Russian Federation "On the Media", by virtue of which accreditation of journalists is possible only on the basis of their expressed will, in connection with which the journalists' consent is presumed by the editorial board furnishing certain details about them.

22. According to the provisions of Article 35 of the Law of the Russian Federation "On the Media", announcements are considered to be mandatory if the media editorial board is required to publish them by virtue of law or court order.

Proceeding from Part 1 of the given article, a media editorial board is required to publish a court ruling that has come into legal force if it contains a requirement on publication in the given media resource.

Cases when media editorial boards specified in Part 2 of Article 35 of the Law of the Russian Federation "On the Media" are obliged to publish materials in accordance with the legislation of the Russian Federation include, in particular, the following. Mandatory publication of materials in media founded by federal state authorities is stipulated in federal laws "On Political Parties" (§ 2 of Provision 1 of Article 14) and "On Technical Regulation" (§ 2 of Provision 9 of Article 9). Provision of air time

and printed space for an election or referendum campaign is the obligation of state and (or) municipal television and radio broadcasting organisations, state and (or) municipal printed periodicals listed in Provision 7 of Article 47 of the Federal Law "On Fundamental Guarantees of Electoral Rights and Rights to Participate in a Referendum of Citizens of the Russian Federation" and the non-state television and radio broadcasting organisations specified in Provision 8 of Article 51 this of the Federal Law.

When applying Part 3 of Article 35 of the Law of the Russian Federation "On the Media", account should be taken the effect that will be imposed by Federal Law "On Guarantees of Equality of Parliamentary Parties in Coverage of Their Activities by State Public Television Channels and Radio Channels", which regulates relations connected with coverage of the activities of parliamentary parties by state public television channels and radio channels, i.e., with placement of information on the activities of parliamentary parties, their bodies, structural subdivisions and persons and factions of political parties specified in Provisions 2–6 Part 2 of Article 4 of this Federal Law.

By virtue of the provisions of the federal constitutional laws "On a State of Emergency" (Provision "h" Part 2 of Article 18, Article 23) and "On Martial Law" (Subprovision 4 of Provision 1 of Article 14, Subprovision 4 of Provision 1 of Article 15), information is announced in the media about the introduction of a state of emergency, on the manner for fulfilment of certain measures applied during a state of emergency and under martial law. Since the given laws do not specify which media are to fulfil this obligation, the information is to be published in the media to which a relevant demand is address on the part of the President of the Russian Federation, the commander of the territory where the state of emergency has been declared, a federal executive body within its terms of reference in relation to implementing martial law.

23. When deciding a question as to whether there are grounds for releasing from liability an editorial board, editor-in-chief or journalist for distributing information infringing on the rights and legitimate interests of citizens or constituting abuse of freedom of the media and (or) the rights of a journalist, it should be borne in mind that Article 57 of the Law of the Russian Federation "On the Media" gives an exhaustive list of circumstances that release an editorial board, editor-in-chief or journalist from the obligation to verify information furnished thereto and, consequently, from liability for distribution of the information. Distribution of information by the media does not include cases of the editor-in-chief

and other editorial workers becoming acquainted with these materials before the media output comes out (in print or on air).

By virtue of Provision 2, Part 1 of Article 57 of the Law of the Russian Federation "On the Media", the editorial board, the editor-in-chief and, journalist are released from liability if information is received thereby from information agencies. Part 3 of Article 23 of the given Law states that, when distributing announcements and materials of information agencies, other media are required to refer to the former. The editorial board, editor-in-chief or journalist may also be released from liability on the basis of Provision 2, Part 1 of Article 57 of the Law of the Russian Federation "On the Media" if they can prove that the information distributed thereby was received from information agencies.

When applying Provision 3 Part 1 of Article 57 of the Law of the Russian Federation "On the Media", courts should take into account the fact that information containing interviews with officials of state authorities and local government, state and municipal organisations, institutions, enterprises, public associations and officials representatives of their press services constitute answers to request for information.

When applying Provision 4 Part 1 of Article 57 of the Law of the Russian Federation "On the Media", it should be clarified whether the official is authorised to speak on behalf of the represented body, organisation or public association and whether the given speech may be recognised as an official one in consideration of the time, place and subject thereof. If, for example, an official is speaking at a previously planned sitting held with the participation of journalists at a specially allocated venue within the building of the relevant body, organisation or public association and in accordance with an approved agenda, this may be deemed official. If the court establishes that the official was not authorised to speak officially and was merely expressing his own personal opinion (to which effect the media editorial board, editor-in-chief, or journalist was aware), the media editorial board, editor-in-chief or journalist may not be released from liability on the basis of Provision 4 Part 1 of Article 57 of the Law of the Russian Federation "On the Media" for reproducing such a statement word-for-word.

Word-for-word reproduction of statements, announcements, materials and fragments thereof (Provisions 4 and 6 Part 1, Part 2 of Article 57 of the Law of the Russian Federation "On the Media") presupposes that they are cited in such a way that does not distort the meaning of the statements,

announcements, materials or fragments thereof and the author's speech is transmitted without distortion. Whereat, it should be borne in mind that, in a number of instances, fragments of statements, announcements or materials that contradict the context but are quoted absolutely precisely may have a meaning contrary to that attached to them in the statement, announcement or material. If, when statements, announcements, materials and fragments thereof are reproduced in the media, any amendments or comments are introduced into them that distort the meaning of the statements, the media editorial board, editor-in-chief or journalist may not be released from liability on the basis of Provisions 4 and 6 Part 1 of Article 57 of the given Law. The burden of proof with respect to the reproduction of a statement, announcement, material or fragments thereof being literal is, by virtue of Part 1 of Article 56 of the CPC RF, borne by the media editorial board, editor-in-chief or journalist referring to this circumstance. Evidence in the given case may consist of audio-recordings, written evidence (including faxes), witness testimonies and other types of evidence, which are subject to evaluation in accordance with Article 67 of the CPC RF.

If Internet sites registered as media include comments by readers not edited in advance (like on the website's readers' forum), the content of such commentaries are covered by the rules established in Part 2 of Article 24 and Provision 5 Part 1 of Article 57 of the Law of the Russian Federation "On the Media" for copyright works broadcast without advance recording. If the relevant editorial board is addressed by a competent state body that has established such commentaries as abuse of freedom of the media, it is entitled to remove them from the website or edit them, guided by the provisions of Article 42 of the Law of the Russian Federation "On the Media". If commentaries constituting abuse of freedom of the media subsequently remain available for users of the given website, the rules of Provision 5, Part 1 of Article 57 of the Law of the Russian Federation "On the Media" do not apply. Consequently, when considering whether it is permissible to hold an editorial board liable, courts should clarify whether any competent state body demanded that the information be removed from the forum and whether the information in connection with distribution of which the question of holding the editorial board liable was raised before the court was removed or edited.

When applying Provision 6 Part 1 of Article 57 of the Law of the Russian Federation "On the Media", account should be taken of the fact that, in this rule, media are understood as those registered in the Russian Federation but, by virtue of the provisions of Parts 2 and 3 of Article 402 of the CPC RF, also foreign media, if the defendant organisation, its management body, branch or representative office is

resident on the territory of the Russian Federation or if an individual defendant is resident in the Russian Federation or if the defendant has assets located on the territory of the Russian Federation or if, on cases of protection of their honour, dignity and business reputation, the claimant is resident in the Russian Federation.

24. When deciding on a claim for a refusal to place an answer (commentary, response) in the media to be recognised as unlawful, the following should be borne in mind.

Proceeding from the provisions of Provisions 3 and 7 of Article 152 of the CC RF and of Article 46 of the Law of the Russian Federation "On the Media", on cases not connected with protection of the honour and dignity of individuals or the business reputation of individuals and legal entities, the right to give an answer in the media is granted to the individual or organisation in relation to which the information is distributed not only if the information distributed by the given media resource (including when it complies with reality) infringes on the rights and legitimate interests of the individual, but also when incorrect information is distributed.

Information containing only certain inaccuracies (such as misprints) may be recognised as not complying with reality only on the condition that these inaccuracies resulted in an assertion of facts or events that did not actually take place during the period to which the distributed information relates.

If the provision of the information in the media is incomplete or one-sided and this results in a distorted perception of some actual event, fact or sequence of events, such publication violating the rights, freedoms or legally protected interests of an individual or organisation, the given persons are entitled to publish their answer in the same media in the manner envisaged by Article 46 of the Law of the Russian Federation "On the Media".

25. Provision 5, Part 1 of Article 49 of the Law of the Russian Federation "On the Media" prohibits distribution in the media of details of the private lives of individuals unless the latter or their legal representatives gave their consent to this, with the exception of instances when this is necessary to protect public interests. Provision 2, Part 1 of Article 50 of the given Law allows distribution of announcements and materials prepared using concealed audio- and video-recordings, cine-recordings and photographs if required for protecting public interests and steps are taken against bystanders being identified.

Article 1521 of the CC RF states that publication and subsequent use of the image of an individual is permissible only with this individual's consent. Such consent is not required, in particular, when an image is used in state, social or other public interests.

Public interests should be understood not as any interest manifested by the audience but as a need by society to identify and reveal a threat to democratic rule of law and civil society, public security and the environment.

Courts should distinguish between announcements of facts (even very dubious ones) capable of exerting a positive influence on public discussion of issues relating to, for example, fulfilment by officials and public figures of their functions and communication of the details of the private life of a person engaged in certain public activities. In the first case, the media are fulfilling their public duty to inform the populace about matters of public interest, whereas in the second case, they do not play such a role.

26. If, during consideration of a case, one of the parties raises the question revealing the source of information serving as the basis for a publication in the media, the court should be guided by Part 2 of Article 41 of the Law of the Russian Federation "On the Media", in accordance with which the editorial board is required to keep the information secret and may not name the person that provided the information on the condition of anonymity, unless a relevant demand is received from a court in connection a case it is hearing. Consequently, personal data of a person that provides an editorial board with information under the condition of anonymity constitutes a secret specially protected by federal law. At any stage of the judicial proceedings on a case, the court is entitled to demand the relevant editorial board name and its information source, if all other possibilities have been exhausted for establishing the circumstances of significance for correct consideration and resolution of the case and the public interest in disclosure of the information source clearly outweighs the public interest of it remaining secret. A demand to disclose an information source may be sent to an editorial board by the court in connection with a case under consideration by the court.

27. Abuse of freedom of the media (Article 4 of the Law of the Russian Federation "On the Media") entails, among other things, the competent body or official issuing a warning to the founder (co-founders) of a media resource, editorial board (editor-in-chief), and the court terminating the media's

activities (Article 16 of the Law of the Russian Federation “On the Media”, of Article 8 and 11 of the Federal Law “On Combating Extremism”).

Considering that warnings issues by a state body or official contain authoritative intent with legal consequences for the founder (co-founders) of the media resource and (or) its editorial board (editor-in-chief), cases on disputing such warnings are subject to consideration in the manner envisaged by Chapters 23 and 25 of the CPC RF.

When verifying the authority of persons issuing such a disputed warning, courts should bear in mind that warnings relating to violation of the requirements of Article 4 of the Law of the Russian Federation “On the Media” may be issued by a registration body (Article 16 of this Law), and ones relating to violation of the requirements of the Federal Law “On Combating Extremism” not only by a registering body but also the federal executive authority for the press, television and radio broadcasting and the media, the Public Prosecutor General of the Russian Federation or the relevant public prosecutor subordinate thereto (Article 8 of the given Federal Law). When resolving the question as to which federal executive body is responsible for fulfilling the above functions, the provisions of the regulatory and legal acts determining the structure of federal executive authorities and their powers should be taken into consideration.

28. When resolving cases relating to abuse of the freedom of the media, the provisions of Article 4 of the Law of the Russian Federation “On the Media” should be applied in aggregate with other federal laws regulating certain public relations: “On Combating Terrorism”, “On Combating Extremism”, “On Narcotic and Psychotropic Substances” and others.

According to Part 1 of Article 4 of the Law of the Russian Federation “On the Media”, the media may not be used, in particular, for committing criminal offences. Since criminal justice is administered in the Russian Federation only by a court (Part 1 Article 8 of the Criminal Procedure Code of the RF), the question as to whether a media resource was used to commit criminal offences should be decided in consideration of a sentence or other court decision on a criminal case that has come into legal effect.

When clarifying whether abuse of the freedom of the media has taken place, the court should take into account not only the words and expressions (wordings) used in an article, television- or radio-programme, but also the context in which they were made (in particular, whether the goal, genre and

style of the article, programme or relevant part thereof may be assessed as expressing an opinion in the sphere of political discussion or as drawing attention to discussion of socially significant issues, whether the article, programme or material is based on an interview and what the attitude is of the interviewer and (or) editorial staff of the media resource to the opinions, judgments or assertions expressed). The court should also consider the public and political situation in the country as a whole or an individual part of it (depending on the region in which the given media resource is circulated).

Courts should bear in mind that, in accordance with Article 5 the Declaration of freedom of political debate in the media, a humoristic or satirical genre, protected by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, allows for a considerable degree of exaggeration and even provocation on the condition that the public is not misled concerning the actual aspect of the affair.

Courts should take account of the specifics of television and radio broadcasting restricting journalists and editors opportunities to correct, specify, interpret and comment on assertions made by participants in a live broadcast programme.

29. In the meaning of the Law of the Russian Federation "On the Media", to suspend media activities consists in a temporary ban on production and issue of a media resource and on preparation and (or) distribution of media output.

Media activities may be suspended by decision of the media founder (co-founders) (in cases and in the manner specified by the editorial charter or by the agreement concluded between the founder and editorial board or the editor-in-chief), on the basis of a court ruling issued on securing a claim for termination of the activities of a media resource (Article 16 of the Law of the Russian Federation "On the Media", Part 3 of Article 11 of the Federal Law "On Combating Extremism"), or on the basis of a court decision (Article 161 of the Law of the Russian Federation "On the Media").

30. The question of applying measures to secure a civil law claim concerning the media is decided according to the rules established by Chapter 13 of the CPC RF.

Part 1 of Article 140 of the CPC RF gives an approximate list of measures for securing a claim and specifies the right of the judge or the court, when necessary, to take other steps to secure a claim, provided they meet the objectives specified in Article 139 of this Code.

Suspension of media activities is an exceptional measure for securing a claim and may be applied only on cases relating to termination of media activities, since, for such cases, such a measure corresponds to the goals set out in Article 139 of the CPC RF and is expressly provided for by Part 5 of Article 16 of the Law of the Russian Federation "On the Media" and Part 3 of Article 11 of the Federal Law "On Combating Extremism".

On other civil law cases relating to activities of the media, suspension of such activities or a ban on a media resource preparing or distributing new material on a specific subject may not be applied as measures to secure a claim, since such measures would not, on the given cases, meet the objective given in Article 139 of the CPC RF and would not be necessary for ensuring the authority and impartiality of justice.

In order to fulfil the requirements set by Part 3 of Article 140 of the CPC RF on commensurability of measures to secure a claim, the nature of the violations committed should be taken into account (in particular, whether they relate to instances of abuse of the freedom of the media or are other violations of the legislation on the media), and the negative consequences that application of such measures might have for the freedom of the media should be assessed.

31. In accordance with Provision 3 Part 1 of Article 26 of the CPC RF, cases relating to termination of the activities of media circulated mostly on the territory of a single constituent entity of the Russian Federation fall under the jurisdiction of the supreme court of a republic, a territory or regional court, a court of a city of federal significance, a court of an autonomous republic or a court of an autonomous area.

If a media resource is circulated in the territory of two or more constituent entities of the Russian Federation, in a case relating to termination of the activities this media resource is to be heard by the court (from among those listed in Article 26 of the CPC RF) whose jurisdiction covers the territory on which the given resource is mostly circulated.

If the actual territory of circulation of the media resource does not coincide with the territory specified in the imprint details, the issue of which court should decide on termination of the activities of this media resource should be determined by the registration data of the media resource, since a change of media circulation territory compared to that indicated at the time of registration is permitted only on the condition of re-registration (Provision 6 Part 1 of Article 10 and Part 1 of Article 11 of the Law of the Russian Federation "On the Media").

32. By virtue of the provisions of the Law of the Russian Federation "On the Media", termination of media activities constitutes a prohibition on production and issue of a media resource and on production and distribution of media output.

When resolving cases on termination of media activities, it should be remembered that this sanction may be applied only in the manner and on the grounds specified by federal laws, in particular Article 16 of the Law of the Russian Federation "On the Media" and Articles 8 and 11 of the Federal Law "On Combating Extremism".

On cases relating to termination of media activities, the court is not entitled to approve an amicable agreement, since, under such cases, the legality of the activities of the media editorial boards is verified and the decision on this question may not be influenced by any agreements between the body (official) making the claim and the media resource or its editorial board.

33. When considering cases on termination of media activities, account should be taken of the fact that an application for termination of media activities may be filed with the court by the registering body and, should the grounds for the application consist in those established by the Federal Law "On Combating Extremism", also by the federal executive authority in the sphere of the press, television and radio broadcasting and mass communications, the Public Prosecutor General of the Russian Federation or the relevant public prosecutor subordinate thereto (Part 1 of Article 16 of the Law of the Russian Federation "On the Media", Part 2 of Article 11 of the Federal Law "On Combating Extremism").

When deciding which bodies should be charged with fulfilling the above functions, account should be taken of the provisions of the normative and regulatory acts determining the structure and powers of the federal executive authorities.

34. Courts should bear in mind the differences in the grounds for terminating media activities envisaged by Part 3 of Article 16 of the Law of the Russian Federation "On the Media" and Part 3 of Article 8 of the Federal Law "On Combating Extremism".

According to Part 3 of Article 16 of the Law of the Russian Federation "On the Media", only the violations of the requirements of Article 4 of this Law committed by the media editorial board in relation to which the registering authority has issued written warnings to the founder and (or) the editorial board (editor-in-chief) are taken into account.

The provisions of Part 3 of Article 8 of the Federal Law "On Combating Extremism" do not require that warnings be issued in relation to new facts testifying to signs of extremism in media activities and serving as a reason for the competent body (official) to address the court. In addition, from the provisions of the given rule of the Federal Law, violations identified after a warning has been issued but committed in materials distributed prior to the given warning may not be recognised as a new fact.

35. To draw the attention of courts to the differences between Part 3 of Article 16 of the Law of the Russian Federation "On the Media" and Part 3 of Article 8 of the Federal Law "On Combating Extremism" in calculating the period during which violations of the legislation committed in circulation of media and the warnings issued in connection therewith.

By virtue of Part 3 of Article 16 of the Law of the Russian Federation "On the Media", media activities may be terminated in the event that repeat violations with respect to which the registering body has issued written warnings to the founder and (or) the editorial board (editor-in-chief) are committed within the twelve months preceding the appeal to the court.

According to Part 3 of Article 8 of the Federal Law "On Combating Extremism", media activities may be terminated if, within twelve months of a warning being issued, new facts are revealed testifying to the activities of this media resource bearing signs of extremism.

36. When considering and resolving cases on termination the media activities on the grounds specified in Part 3 of Article 16 of the Law of the Russian Federation "On the Media" and Part 3 of Article 8 of the Federal Law "On Combating Extremism", warnings recognised by the court as invalid may not be taken into consideration.

The court is entitled to permit claims for media activities to be terminated having assessed the issued warning.

Ruling of the Plenary Session of the Supreme Court of the Russian Federation and of the Plenary Session of the Supreme Commercial Court of the Russian Federation of 23 December 2010 No. 30/64 Moscow "On Certain Questions Arising During Consideration of Cases on Awarding Compensation for Violation of the Right to a Trial Within a Reasonable Time or the Right to Enforcement of a Judgment Within a Reasonable Time"

Clarifications by the supreme courts on compensation for bureaucratism

Provision 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms secures everyone's right, in the event of a dispute over their civil rights and obligations or of any criminal charge against him, to a fair and public trial, within a reasonable time, by an independent and impartial tribunal established by law.

The right to judicial defence, including the right to execution of a judicial act, is guaranteed by Article 46 of the Constitution of the Russian Federation.

4 May 2010 was the effective date of Federal Law of 30 April 2010 No. 68-FZ "On Compensation for Violation of the Right to a Trial Within a Reasonable Time or the Right to Enforcement of a Judgment Within a Reasonable Time" (hereinafter the Compensation Law) and Federal Law of 30 April 2010 No. 69-FZ "On Amendment of Certain Legislative Acts of the Russian Federation in Connection with Adoption of the Federal Law 'On Compensation for Violation of the Right to a Trial Within a Reasonable Time or the Right to Enforcement of a Judgment Within a Reasonable Time '".

Since, when considering cases on awarding compensation (damages) for violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time, courts of general jurisdiction and commercial courts (hereinafter also the courts) have been faced with a number of question, for the purposes of their correct and uniform resolution, the Plenary Session of the Supreme Court of the Russian Federation and the Plenary Session of the Supreme Commercial Court of the Russian Federation resolve to provide courts with the following clarifications:

General provisions

1. By virtue of Part 1 of Article 1 of the Compensation Law, in interconnection with the provisions of its Article 3, the given Law applies in the following cases:

a) violations of reasonable time for administration of justice on cases considered by courts of general jurisdiction and commercial courts in accordance with the jurisdiction rules set by the procedural legislation;

b) violations of reasonable time for execution of judicial acts issued on claims or applications to the Russian Federation, constituent entities of the Russian Federation, or a municipality for reimbursement of harm caused to an individual or legal entity as a result of unlawful actions (omissions) of state or local government bodies or their officials; violations of reasonable time for execution of judicial acts providing for making state or local government bodies, their officials, state or municipal civil servants liable for making payments out of the federal budget, the budget of a constituent entity of the Russian Federation or a local budget, and judicial acts providing for levying of execution on funds of the federal budget, budget of a constituent entity of the Russian Federation, or a local budget under monetary obligations of budget (government) institutions.

In accordance with Article 6 of the Budget Code of the Russian Federation (hereinafter the BC RF), a monetary obligation is understood as the duty of the recipient of budgetary funds to pay to the budget, individual or legal entity, out of the budgetary funds, certain monies in accordance with fulfilled conditions of a civil law transaction concluded within the scope of its budgetary authority, or in accordance with the provisions of law, other legal act or the terms of an agreement of contract.

In connection with this, courts should keep in mind that the Compensation Law does not apply to claims for awarding damages in cases of violation of the term for execution of judicial acts providing for levying of execution on monetary funds of individuals and organisations not in receipt of budgetary funds;

c) violations of reasonable time in the course of pre-trial criminal case proceedings under which the suspect or the accused has been determined.

2. Courts should bear in mind that absence of the right to award damages on the basis of the Compensation Law does not deprived the interested party of the right to file a court claim for damages

in accordance with Articles 1069 and 1070 of the Civil Code of the Russian Federation (hereinafter the CC RF) or for non-pecuniary damages on the basis of Article 151 of the CC RF.

3. When considering cases on awarding damages for violation of the right to enforcement of a judgment within a reasonable time, it should be borne in mind that, in accordance with Federal Law of 8 May 2010 No. 83-FZ "On Amending Certain Legislative Acts of the Russian Federation in Connection with Improvement of the Legal Regulations of State (Municipal) Institutions" (hereinafter Federal Law No. 83-FZ), from 1 January 2011 a new regulation is introduced with respect to the procedure for execution of judicial acts providing for levying of execution on budget funds, in connection with creation of government institutions and a change to the legal regulations of publicly-funded institutions.

During execution of judicial acts providing for levying of execution on the funds of budgets of the budgetary system of the Russian Federation under monetary obligations of government institutions, the provisions established by Chapter 241 of the BC RF are applied.

From 1 January 2011 until 1 July 2012, a transition period is established (Part 13 of Article 33 of the Federal Law No. 83-FZ) during which the publicly-funded institution in receipt of the budgetary funds secures performance of its monetary obligations specified in the writ of execution as stipulated by Chapter 241 of the BC RF (Provision 6 Part 19 of Article 33 of the Federal Law No. 83-FZ).

Execution is levied in the manner established by Part 20 of Article 30 of the Federal Law No. 83-FZ on the funds of publicly-funded institutions in relation to which, during the transitional period, a decision is passed by federal executive bodies, laws of constituent entities of the Russian Federation, regulatory and legal acts of competent local government bodies in consideration of the provisions of Parts 15 and 16 of Article 33 of the Federal Law No. 83-FZ on granting them subsidies from the relevant budget of the budget system of the Russian Federation in accordance with Provision 1 of Article 781 of the BC RF. The given publicly-funded institutions are not, in accordance with Provision 1, Part 19 of Article 33 of the Federal Law No. 83-FZ, recipients of budgetary funds and the provisions of the Compensation Law may not be applied to them.

On cases of levying of execution on funds of budgets belonging to the budget system of the Russian Federation in relation to unfulfilled public obligations subject to execution in monetary form, the

powers to execute which are granted by a federal executive body (state body), the executive state body of a constituent entity of the Russian Federation or local government body to the relevant publicly-funded institution, in accordance with Provision 5 of Article 92 of Federal Law dated 12 January 1996 No. 7-FZ "On Non-Commercial Organisations" in the name of a public law structure, the debtor is the relevant state (local government) body.

4. Proceeding from the provisions of Part 1 of Article 1 of the Compensation Law, stakeholders entitled to appeal to a court for damages include citizens of the Russian Federation, foreigners, stateless persons, foreign and international organisations that are parties or third parties filing independent claims with respect to the dispute, petitioners, claimants, debtors, and suspects and accused parties in judicial proceedings on cases involving civil and public relations (hereinafter civil cases), as well as defendants, convicted and acquitted persons, victims, civil claimants and civil defendants in criminal proceedings.

In the meaning of Article 61 of the Criminal Procedure Code of the Russian Federation (hereinafter the Criminal Procedure Code of the RF), and of Article 3 of the Compensation Law, the given Law does not apply, in particular, to claims for damages for violation of the time periods for considering complaints in the manner of Article 125 of the Criminal Procedure Code of the RF or matters connected with verdict execution (for example, applications for parole).

To clarify that the Compensation Law does not exclude the possibility for a person subject to administrative offence proceedings, injured party, legal representatives of an individual subject to administrative proceedings or a victim that is a minor or physically or mentally unable to exercise their own rights to apply to court for compensation for violation of a reasonable time for administration of justice.

Other stakeholders whose right to administration of justice within a reasonable time or the right to enforcement of a judgment within a reasonable time has been violated may apply to court for compensation only if this is expressly provided for by federal law (Part 1 of Article 1 of the Compensation Law).

5. Proceeding from Article 44 of the Civil Procedure Code of the Russian Federation (hereinafter the CPC RF) and Article 48 of the Code of Commercial Procedure of the Russian Federation (hereinafter

the f RF), in the event of death of an individual or reorganisation of a legal entity that has applied to court for compensation for violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time , the given persons may be replaced by their legal successors at any stage of the proceedings and at the stage of execution of the court ruling.

6. According to Part 1 of Article 45 of the CPC RF, a public prosecutor is entitled apply to court for compensation for violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time to protect the interests of individuals among those entitled to demand damages and, owing to their state of health, age or other good reasons are themselves unable to make such an application to court.

7. Cases relating to compensation fall under the jurisdiction of courts of general jurisdiction if the relevant claim derives from protracted administration of justice on the case in a court of general jurisdiction or protracted non-execution of a judicial act of a court of general jurisdiction, as well as protracted pre-trial procedures in a criminal case (Provision 1 Part 1 and Provision 1 Part 2 of Article 3 of the Compensation Law).

Cases relating to compensation fall under the jurisdiction of commercial if the relevant claim derives from protracted administration of justice on a case in a commercial court or protracted non-execution of a judicial act of a commercial court (Provision 2 Part 1 and Provision 2 Part 2 of Article 3 of the Compensation Law).

If a civil case in connection with which grounds arise for applying for damages was considered by a court of general jurisdiction and by a commercial court, the court to whose jurisdiction the compensation case is subject is determined depending on which of the given courts issued the final judicial act or is hearing a continuing civil case.

Applications to court for damages

8. In accordance with Article 244.1 § 12 of the CPC RF and Part 1 of Article 2222 of the APC RF, an application (claim) for compensation for violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time is submitted to the court authorised to consider such an application via the court that issued the decision.

In the meaning of the given rules, an application for damages is filed via the court that issued the first instance decision (ruling, resolution) or verdict, or via the court considering the case in the first instance.

An application for compensation for violation of the right to enforcement of a judgment within a reasonable time is submitted via the court considering the case in the first instance, irrespective of where the judicial act is executed.

In the event of violations of reasonable times in the course of pre-trial procedures on criminal cases, an application for damages is submitted directly to the supreme court of the republic, the territorial or regional court, the court of a city of federal significance, the court of an autonomous region, the court of an autonomous areas, or the district (naval) military court at the location of the preliminary investigation, where it is also subject to consideration (Article 244.1 § 22 of the CPC RF).

9. An application received by a court for damages is to be forwarded to the court authorised to consider it, together with the case, within three days of receipt of the application.

If an application for compensation for violation of the right to trial within a reasonable time is filed before the proceedings on a civil or criminal case are completed, the application is sent to the court authorised to consider it, together with copies of judicial acts, minutes of court sessions and decision by the officials administering criminal justice.

If a case in connection with which grounds arise for submitting a claim for damages is at a higher instance court, the application received by the court is sent to the court authorised to consider it, without the case. Whereat, copies of judicial acts, minutes of court sessions, and decision of the officials administering criminal justice are sent out at the request of the court authorised to consider the application.

10. Proceeding from the general requirements of the procedural legislation on the format and content of any application address to a court, an application for damages is submitted in writing and should be signed by the person submitting it or their representative, and state duty should also be paid.

If an application for damages does not meet the given requirements or its content does not meet the requirements established by Article 2443 of the CPC RF and Article 2223 of the APC RF, such an application is subject to discontinuance on the basis of Article 2445 of the CPC RF and of Article 2225 of the APC RF.

It should be remembered that the Code of Commercial Procedure of the Russian Federation, in contrast to the Civil Procedure Code of the Russian Federation (Part 3 of Article 136), does not specify the possibility of appealing against discontinuance of an application for damages.

11. An application for compensation for violation of the right to trial within a reasonable time under a civil case may be filed within six months of the last judicial act issued on the case coming into legal force and, under a criminal case, within six months of the guilty or innocent verdict or ruling (resolution) on termination of the criminal case or the criminal proceedings coming into legal force (Provision 1, Part 5 and Part 6 of Article 3 of the Compensation Law, Article 244.2 § 1 of the CPC RF, Part 4 of Article 244 [1] of the CPC RF, Article 222.2 § 11 of the APC RF).

In connection with this, account should be taken of the fact that the final judicial act issued on a civil case may, proceeding from the provisions of Article 13 of the CPC RF and Article 15 of the APC RF, be a decision or ruling on termination of the proceedings on the case, a ruling on discontinuance of an application adopted (issued) by a court of the first instance, ruling of a court of the appeal instance and, if the case is not remanded for consideration by a lower court, a ruling or resolution of a court of the cassation instance adopted on the basis of Article 361 of the CPC RF or Article 287 of the APC RF, a ruling or resolution of a court of the supervisory instance issued on the basis of Article 390 of the CPC RF or Article 305 of the APC RF, or a ruling refusing to transfer the case for supervisory reconsideration of a judicial act to the Presidium of the Supreme Commercial Court of the Russian Federation (Part 8 of Article 299 of the APC RF).

On cases on administrative offences, the final judicial act may be a judge's ruling appointing an administrative punishment, terminating the proceedings on a case on an administrative offence (Part 1 of Article 29.9 of the Code of Administrative Offences of the RF) and, if the case is not sent for reconsideration or for consideration by jurisdiction, then a judge's decision on an appeal against the ruling on the case on an administrative offence (Provisions 1–3 Part 1 of Article 30.7 of the Code of

Administrative Offences of the RF), a judge's decision on subsequent appeals against the ruling on a case on an administrative offence or against a decision on an appeal against this ruling (Part 3 of Article 30.9 of the Code of Administrative Offences of the RF), a ruling of the Presidium of the Supreme Commercial Court of the Russian Federation on the results of supervisory consideration of an appeal against a ruling that has come into legal effect on a case on an administrative offence (Provisions 1, 2 and 4, Part 2 of Article 30.17 of the Code of Administrative Offences of the RF).

12. If the proceedings on a civil case are not completed, proceeding from Provision 2, Part 5 of Article 3 of the Compensation Law, Article 244.2 § 21 of the CPC RF, and Article 222.2 § 21 of the APC RF, an application for damages may be filed on expiry of three years from the statement of claim (application) being received by the court of the first instance.

13. In no guilty or innocent verdict is issued on a criminal case or ruling (resolution) on terminating a criminal case or criminal prosecution or if they have been issued but have not come into legal force, an application for damages may be filed on expiry of four years from the criminal prosecution being initiated (Part 7 of Article 3 of the Compensation Law, Part 4 of Article 2441 of the CPC RF).

For the purposes of the Compensation Law, initiation of criminal prosecution is understood as the time from which, in accordance with Articles 46 and 47 of the Criminal Procedure Code of the RF, the person is recognised as being a suspect (an accused).

14. In accordance with Part 8 of Article 3 of the Compensation Law, Part 3 of Article 2441 of the CPC RF and Part 3 of Article 2221 of the APC RF, an application for compensation for violation of the right to enforcement of a judgment within a reasonable time is submitted within six months of completion of the execution proceedings on the judicial act.

If the execution proceedings on a judicial act are not concluded, an application for damages may be filed no earlier than six months from expiry of the term set by federal law for execution of a judicial act (Part 8 of Article 3 of the Compensation Law, Part 3 of Article 2441 of the CPC RF, Part 3 of Article 2221 of the APC RF).

The Budget Code of the Russian Federation sets a three-month period for execution of judicial acts on claims against the Russian Federation, constituent entities of the Russian Federation, or a municipality

(Provision 6 of Article 2422); for execution of judicial acts providing for levying of execution on federal budget funds with respect to monetary obligations of federal publicly-funded institutions (Provision 8 of Article 2423); for execution of judicial acts providing for levying of execution on budget funds of a constituent entity of the Russian Federation with respect to monetary obligations of publicly-funded institutions of a constituent entity of the Russian Federation (Provision 7 of Article 2424); for execution of judicial acts providing for levying of execution on local budget funds with respect to monetary obligations of local publicly-funded institutions (Provision 7 of Article 242). Whereat, if accounts are opened for a federal publicly-funded institution, publicly-funded institution of a constituent entity of the Russian Federation, municipal publicly-funded institution with an institution of the Central Bank of the Russian Federation or with a credit institution, execution is levied on a judicial act on levying of execution on funds of the central budget, of the budget of a constituent entity of the Russian Federation or a local budget in accordance with the Federal Law "On Execution Proceedings" (Provision 13 of Article 2423, Provision 12 of Article 2424, Provision 12 of Article 2425 of the BC RF).

From 1 January 2011, the given periods apply to judicial acts providing for levying of execution on budget funds under monetary obligations of government institutions.

15. Courts should proceed from the fact that the six-month period for applying to court for compensation, as established by Provision 1, Part 5, Parts 6 and 8 of Article 3 of the Compensation Law, Article 244.2 § 1 of the CPC RF, Parts 3 and 4 of Article 244 of the CPC RF, Article 222.2 § 1 of the APC RF, Part 3 of Article 2221 of the APC RF, may be reinstated on the basis of a petition from the damages applicant but only if said person was entitled to apply to the court for compensation.

A petition for reinstatement of an elapsed period is considered by the court authorised to consider the application for damages or personally by a judge of this court. A petition is considered according to the rules established by Article 112 of the CPC RF and Article 117 of the APC RF.

When deciding the question of reinstating an elapsed period, account should be taken of the fact that such reinstatement is permitted only in the event that circumstances are established that objectively precluded the possibility of timely submission to the court of the application for damages, irrespective of the person petitioning for reinstatement of the said term (for example, ill health preventing the

person from applying to the court, a helpless state, as well as a copy of a document not being sent to the person in a timely fashion).

As a rule, references by a petitioning organisation to the need for agreeing with some person the question of submitting an application for damages, the applicant's representative being away on a business trip (vacation) staff changes, absence of a lawyer in the organisation, change of company head (his absence on a business trip or vacation), as well as other internal organisational problems of the legal entity applying for damages, may not be considered as such circumstances.

16. A ruling issued on the results of consideration of a petition for reinstatement of an elapsed term is appealed in the manner established by the procedural legislation of the Russian Federation.

Acceleration of case proceedings

17. In the meaning of Provision 2, Part 5 and Part 7 of Article 3 of the Compensation Law, Article 244.2 § 2 of the CPC RF, Part 4 of Article 2441 of the CPC RF, Article 222.2 § 21 of the APC RF, in interconnection with Part 6 of Article 61 of the CPC RF, Part 6 of Article 61 of the APC RF, and Part 5 of Article 61 of the Criminal Procedure Code of the RF, a petition for compensation for violating the right to trial within a reasonable time under civil and criminal cases still being heard may be accepted for hearing by the court only if the person claiming damages previously applied to the chairman of the relevant court for acceleration of the case proceedings (hereinafter the petition for acceleration).

If a civil or criminal case is considered by a Justice of the Peace, the petition for acceleration is submitted to the chairman of the district court.

In the event that a reasonable time for pre-trial proceedings on a criminal case is violated, the right to submit an application for damages may be exercised only on the condition of prior complaint to a public prosecutor or the head of the investigatory body in the manner of Part 2 of Article 123 of the Criminal Procedure Code of the RF.

18. A petition for acceleration may be submitted to the chairman of the court by persons entitled to submit applications for damages, as well as a public prosecutor applying to the court in defence of the

interests of the given persons in the manner of Article 45 of the CPC RF and participating in connection with this case, on which grounds arose for applying to the chairman of the court.

A petition for acceleration should, in particular, state the circumstances by which the applicant substantiates its claim for accelerated hearing of the case.

19. A petition for acceleration is considered personally by the chairman of the court within five days of the court receiving the given petition, without summoning the participants in the case.

In the meaning of Part 6 of Article 61 of the CPC RF, Part 6 of Article 61 of the APC RF and Part 5 of Article 61 of the Criminal Procedure Code of the RF, when assessing the duration of case hearings or protraction of judicial proceedings, account should be taken of whether the court took steps to consider the case in a timely fashion, so the chairman of the court is entitled to demand that the judge hearing the relevant case furnish information on progress of the case and actions taken to ensure its timely consideration.

20. After considering the petition for acceleration, the chairman of a court issues a reasoned ruling (resolution) which may, if grounds are established for accelerating consideration of the case, set the period during which a court session on the case should be conducted.

A ruling (resolution) of the chairman of the court may specify other actions required for accelerating consideration of the case (Part 7 of Article 61 of the CPC RF, Part 7 of Article 61 of the APC RF, Part 6 of Article 61 of the Criminal Procedure Code of the RF). In particular, the chairman of the court is entitled to draw the judge’s attention to the need to take steps to ensure prompt notification of the participants in the case, receive the evidence required by the court, exercise control over the time taken for performing expert reviews, and resume proceedings on the case if the circumstances responsible for its suspension are eliminated.

When choosing the specific measures required for accelerating consideration of a case, the chairman of the court should take into account that violation of the principles of independence and impartiality of judges is impermissible. In connection with this, the chairman of the court is not entitled, in particular, to appoint an expert review, decide in advance whether or not any given evidence is

reliable, the priority of some over other evidence or take other actions to interfere in the activities of the judge in administering justice on the given case.

Measures that should be taken for accelerating consideration of a case may not be addressed to participants therein.

21. If, on consideration of the petition for acceleration, the chairman of the court fails to find grounds for accelerating the case hearings, he issues a reasoned ruling (resolution) dismissing the petition for acceleration.

A petition for acceleration, as well as the ruling (resolution) issued by the chairman of the court after considering it, are attached to the materials of the case for accelerated consideration of which the petition was filed.

A copy of the ruling (resolution) is sent to the petitioner for acceleration and other participants in the case.

22. Since the effective procedural legislation does not specify the possibility of appealing against a ruling (resolution) issued by the chairman of a court after considering a petition for acceleration, such a ruling (resolution) is not subject to appeal.

23. Refusal by the chairman of the court to satisfy a petition for acceleration, refusal by the public prosecutor or head of the investigatory body to satisfy a complaint submitted in the manner of Part 2 of Article 123 of the Criminal Procedure Code of the RF, or failure by the given persons to consider the given petition or complaint do not deprive the person who filed the petition or he complaining about the right to apply to court for damages.

Return of an application for compensation (damages)

24. Given the grounds envisaged by Article 2446 of the CPC RF, Article 2226 of the APC RF, an application for damages is returned.

When applying Provision 1, Part 1 of Article 2446 of the CPC RF and Provision 1, Part 1 of Article 2226 of the APC RF, courts should bear in mind that persons not entitled to file an application are:

persons not covered by Part 1 of Article 1 of the Compensation Law, their representatives, as well as representatives whose powers to sign and file an application for damages with the court on behalf of persons entitled to claim damages have not been duly established;

persons in relation to which the European Court of Human Rights has issued a decision on the acceptability of their complaint against the alleged violation of their rights to a trial within a reasonable time or right to execution of a judicial act within a reasonable time or on the merits of their case;

persons claiming compensation for violation of the right to execution of judicial acts within a reasonable time if judicial acts have been issued in relation to them on reimbursement for harm caused as a result of unlawful actions (omissions) by state or local government bodies or their officials, or judicial acts holding state or local government bodies, their officials, state or municipal civil servants liable to make payments out of funds of the federal budget, the budget of a constituent entity of the Russian Federation or a local budget, or if judicial acts have not been issued on levying execution on funds of the central budget, of the budget of a constituent entity of the Russian Federation or of a local budget under monetary obligations of publicly-funded (government) institutions.

25. When applying Provision 2, Part 1 of Article 2446 of the CPC RF, of Provision 2 Part 1 of Article 2226 of the APC RF, account should be taken of the fact that an application for damages is returned if filed:

not via the court that issued the decision;

without preliminary petition by the interested party for accelerated consideration of a civil case on which the proceedings have lasted over three years;

on expiry of six months from the last judicial act issued on a civil case coming into legal effect;

before three years have expired from the application(s) on an ongoing civil case being received by the court of the first instance.

Since the Compensation Law (Parts 6–8 of Article 3), the Civil Procedure Code of the Russian Federation (Part 3 and 4 of Article 2441) and the Code of Commercial Procedure of the Russian

Federation (Part 3 of Article 2221) also establish, in cases of violation of the right to enforcement of a judgment within a reasonable time, the right to criminal trial within a reasonable time, special terms for submitting a compensation claim, non-observance of which precludes the possibility of its consideration, proceeding from analogy of law with respect to Provision 2 Part 1 of Article 2446 of the CPC RF or Provision 2 Part 1 of Article 2226 of the APC RF, the judge is entitled return the application, if it is filed:

on expiry of six months from a guilty or innocent verdict or ruling (resolution) on termination of a criminal case or criminal prosecution coming into legal effect;

before four years have expired since the criminal prosecution was launched under an ongoing criminal case;

on expiry of six months following the end of proceedings on execution of a judicial act;

earlier than six months from the deadline set by federal law for execution of a judicial act.

The court returns an application submitted in violation of the time period for its submission unless a petition for reinstatement of an elapsed deadline is received or reinstatement of the elapsed deadline has been refused.

If a criminal trial lasts for more than four years, proceeding from analogy of law with respect to Provision 2 Part 1 of Article 244 [6] of the CPC RF, the judge is entitled to return a compensation claim if it is filed without the interested party first petitioning for accelerated consideration of the criminal case or submitting a complaint in the manner of Provision 2 of Article 123 of the Criminal Procedure Code of the RF.

26. On the basis of Provision 5 Part 1 of Article 2446 of the CPC RF and of Provision 5 Part 1 of Article 2226 of the APC RF, the court is entitled to return a compensation claim in view of the timeline of the trial on the case or that of execution of the judicial act clearly testifying to absence of any violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time , if, in particular, the total duration of the case hearings does not exceed the total time for considering it under the law for each judicial instance, the timeline for execution of a

judicial act or for pre-trial proceedings in a criminal case has been observed, the proceedings on the case not having been repeatedly suspended, the judicial hearings deferred, the petition returned or the case handed from one court to another.

If the time by which the periods set by law for consideration of a case, execution of a judicial act, or conducting of pre-trial criminal proceedings have overrun is obviously insignificant, this is clear evidence of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time not having been violated.

27. By virtue of Part 4 of Article 2446 of the CPC RF and Part 5 of Article 2226 of the APC RF return of an application for damages is no impediment to repeating such an application to the court after the circumstances serving as the grounds for its return have been eliminated, unless they obviously cannot be eliminated (for example, the person is not entitled to claim compensation under the Compensation Law).

28. A ruling on returning a compensation claim may appealed in compliance with the procedural legislation of the Russian Federation.

Preparation of a case for judicial hearing and consideration of a compensation claim

29. After accepting an application for damages, the judge prepares the case for judicial hearing in the manner established by the procedural legislation, in consideration of the rules of Part 4 of Article 2448 of the CPC RF and Part 3 of Article 2228 of the APC RF.

Whereat it should be kept in mind that the time and place for holding the judicial hearing are determined by judges not at the end of the case preparation for judicial hearing but when the compensation claim is accepted for proceedings (Part 3 of Article 2444 of the CPC RF, Part 3 of Article 2224 of the APC RF).

30. According to Part 4 of Article 2444 of the CPC RF and Part 4 of Article 2224 of the APC RF, copies of a ruling on accepting an application for damages for violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time are sent to the

applicant, the body or official responsible for execution of the judicial act, as well as other interested parties.

By other interested parties is meant persons whose actions (omissions) caused an extension of the duration of the trial or execution of a judicial act. In particular, a copy of the ruling on accepting an application for damages for violation of the right to enforcement of a judgment within a reasonable time may be sent to the chief controller of the funds of the federal budget, the chief controller of the funds of a budget of a constituent entity of the Russian Federation, the chief controller of the funds of a local budget and a federal treasury body.

The court or judge that heard (is hearing) the case, in connection with which grounds have arisen for submitting a compensation claim, as well as participants in this case, may be called to participate as an interested party in a compensation case. At the same time, the given court or Judge is not deprived of the right to present clarifications, objections or arguments relating to the compensation claim.

31. Submission of a compensation claim does not constitute grounds for deferring the judicial hearings on the case, in connection with which the compensation claim was filed, suspending the judicial proceedings on the given case or suspending execution of the judicial act issued on this case.

32. A compensation claim is considered by the court according to the general rules on claims procedures, with the specifics established by Chapter 221 of the CPC RF and Chapter 271 of the APC RF.

In connection with this, proceeding from analogy of law, the court is entitled to terminate the proceedings on a case on compensation for violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time, if a court decision has come into legal force in favour of the damages claimant (Article 220 § 3of the CPC RF, Provision 2, Part 1 of Article 150 of the APC RF).

Case proceedings are also subject to termination if the court accepts for hearing a compensation claim from a person not entitled to file it (Article 220 § 2 of the CPC RF, Provision 1 Part 1 of Article 150 of the APC RF).

If, when considering an application for compensation for violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time, it is established that, in relation to the given claimant, a judicial act was previously awarding non-pecuniary damages for the given violations, proceedings on the case are also subject to termination (Article 220 § 3 of the CPC RF, Provision 2, Part 1 of Article 150 of the APC RF).

If, when considering an application for damages, it is established that, in relation to the claimant, a judgment or decision was previously issued by the European Court of Human Rights on the same subject and the same grounds, proceedings on the case are also subject to termination.

33. When considering a claim, the judge is not restricted by the arguments contained in the compensation claim but establishes violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time proceeding from the content of the judicial acts and other materials of the case.

Establishment of violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time constitutes grounds for awarding damages.

34. When applying Part 5 of Article 2441 of the CPC RF, it should be kept in mind that, even if a judicial act on the case in connection with which the grounds arose for awarding compensation for violation of the right to a trial within a reasonable time is under supervisory consideration by a judge, this does not impede this judge from participating in considering the compensation claim.

Circumstances of material significance of establishing violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time

35. When assessing the legal and factual complexity of a case, account should be taken, in particular, of circumstances complicating consideration of the case, the number of co-claimants, co-defendants and other case participants, the need for an expert review, their complexity, the need to question a substantial number of witnesses, participation in the case of foreign citizens, the need to apply rules of foreign law, the scope of the accusation made, the number of suspects, accused, convicted persons and victims and the existence of international investigation requests.

Courts should proceed from the fact that such circumstances as consideration of the case by different judicial instances and participation in the case by public authorities may not testify in themselves to complexity of the case.

36. When assessing the conduct of the applicant, courts should keep in mind that the applicant cannot be held liable for protracted consideration of the case in connection with use thereby of procedural remedies provided by the legislation, in particular for changing the claims, studying the case files, materials of the case, filing petitions or appealing against issued judicial acts.

At the same time, in the sense of Part 2 of Article 1 of the Compensation Law, the court is entitled to issue a decision dismissing a compensation claim, if failure by the claimant to fulfil procedural obligations (for example, failure to produce evidence on a civil case, repeat failure to attend court sessions without good reason) resulted in the judicial proceedings running over a reasonable time.

37. When assessing the actions of a court (judge), the following questions are to be studied: timely scheduling of the case for hearing, holding of court sessions at the appointed time, the time taken by judges to prepared a reasoned decision and send it to the parties, the completeness of the control exercised by the judges over performance of the court officials in their official obligations, including to notify the case participants of the time and place of the court session, timely drawing up of the minutes of the court session and acquaintance of the parties therewith, fullness and timeliness of judges adopting measures in relation to the parties to the proceedings and other persons involved in the administration of justice form the purpose of precluding procedural bad faith on their part and procedural bureaucratism with respect to the case. In consideration of this, questions connected with the judge exercising control over the duration of expert reviews, imposition of fines, etc. are also are subject to investigation.

Courts should bear in mind that deferral of case hearings, appointment of holding of expert reviews, participation by the judge in considering other cases, return of a criminal case to the public prosecutor for the purpose of eliminating violation of the criminal procedural legislation during inquiry and preliminary investigation do not in themselves contravene the effective legislation. However, if the given actions entail violation of the right to a trial within a reasonable time, an application for damages is subject to satisfaction.

38. Circumstances connected with organising the work of the court (for example, absence of the requisite panel of judges, replacement of a judge for reasons of ill health, vacation, study, business trip, termination of or suspension of authority) or with organising the work of the inquiry and investigation agencies and the public prosecutor's office may not be deemed grounds justifying administration of justice taking more than a reasonable time (Part 4 of Article 61 of the CPC RF, Part 4 of Article 61 of the APC RF, Part 4 of Article 61 of the Criminal Procedure Code of the RF).

39. When assessing the overall duration of execution of a judicial act, account should be taken, in particular, of whether the duly executed document was issued and the given document dispatched in a timely fashion by the court to the body authorised to execute the relevant judicial act. Whereat it should be borne in mind that failure to execute a judicial act in a reasonable time is not excused by circumstances connected, among other things, with organisation of the procedure for execution of judicial acts or absence of the funds required for executing the judicial act.

40. The actions of a court (judge), bodies, organisations or officials responsible for executing a judicial act, a public prosecutor, head of an investigation body, investigator, head of an inquiry division or inquiry officer are considered sufficient and effective (Provisions 3 and 4, Part 2, Provision 3, Part 3 of Article 2448 of the CPC RF, Provisions 3 and 4, Part 2 of Article 2228 of the APC RF), if such actions promote timely consideration of a civil or criminal case, execution of a judicial act and performance of criminal prosecution.

41. When calculating the overall duration of administration of justice on a civil case considered by a court, the period taken into account is that running from when the statement of claim (application) is received by the court of the first instance until the final judicial act is issued on the case (Provision 4 of Article 2443 of the CPC RF, Provision 4 of Article 2223 of the APC RF).

When calculating the overall duration of administration of justice on an ongoing civil case, the period taken into account is that running from when the statement of claim (application) is received by the court of the first instance until the application for damages is received by the court authorised to consider it.

42. When calculating the overall duration of administration of justice on a criminal case considered by a court, the period taken into account is that running from when the criminal prosecution is initiated

until the guilty or innocent verdict or ruling (resolution) of the court on termination of the criminal case or criminal prosecution comes into legal effect.

When calculating the overall duration of pre-trial procedures on a criminal case, the period taken into account is that running from when the criminal prosecution is initiated until a ruling on termination of criminal prosecution or the criminal case is issued.

When calculating the overall duration of administration of justice on an ongoing criminal case, the period taken into account is that running from when the criminal prosecution is initiated until an application for damages is received by the court authorised to consider it.

43 When calculating the overall duration of execution of a judicial act, the period taken into account is that running from receipt of a duly executed writ of execution until execution procedures with respect to the judicial act are completed (Provision 6 of Article 2422, Provision 8 of Article 2423, Provision 7 of Article 2424, Provision 7 of Article 2425 of the BC RF).

44. When calculating the overall duration of administration of justice on a civil or criminal case, only the time during which the case is being handled by the court, inquiry and investigation agencies and the public prosecutor's office.

The period for supervisory review of judicial acts that have come into legal effect on a civil case or their review with respect to newly discovered circumstances is included in the overall duration of administration of justice if the reconsideration by the court results in issue of a ruling (resolution) on the basis of Article 390 or Part 3 of Article 397 of the CPC RF.

If a panel of judges of the Supreme Commercial Court of the Russian Federation has issued a ruling on a case refusing to transfer it to the Presidium of the Supreme Commercial Court of the Russian Federation for supervisory review of the judicial act, the time between the given disputed judicial act issued on the case coming into legal effect and the judges of the Supreme Commercial Court of the Russian Federation ruling on initiating supervisory proceedings is not included in the overall duration of administration of justice on the civil case considered by the court.

45. Courts should take into account that an overall duration of administration of justice on a civil case of over three years and on a criminal case of over four years does not always testify to violation of the right to a trial within a reasonable time, whereas completion of a civil case in less than three years and of a criminal case in less than four years may, in consideration of the circumstances of the case, be evidence that the right to a trial within a reasonable time has been violated.

46. When considering cases on compensation for violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time, courts are not entitled to verify the legality of and justification for judicial acts issued on a case with which grounds for claiming damages are connected.

Issue of compensation decisions

47. Courts should bear in mind that awarded damages constitute monetary reimbursement for harm caused as a consequence of violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time, which is subject to payment whether or not the body or official that caused the harm is culpable.

A person filing a compensation claim does not have to prove the existence of this harm since, if violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time is established, the harm is presumed.

48. In the meaning of Part 2 of Article 1 of the Compensation Law, damages are not awarded if the duration of administration of justice on the case or execution of a judicial act is entailed exclusively by the actions of the claimant or by extraordinary and unpreventable circumstances in the given situation (force majeure).

49. In each specific case, the court should take an individual approach to determining the damages for violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time.

In particular, the amount of the damages should be determined by the court in consideration of the claimant's claims filed with the court, the circumstances of the case or execution of the judicial act

involving a violation, the duration of the violation, its consequences and their significance for the claimant.

When setting damages, the court should also consider the practice of the European Court of Human Rights and the amount of damages awarded by this Court for analogous violations (Part 2 of Article 2 of the Compensation Law).

50. If, during consideration of a compensation case, circumstances are revealed that facilitated violation of the right of individuals and organisations to trial within a reasonable time or to execution of a judicial act within a reasonable time, courts of general jurisdiction should draw the attention of the relevant body, organisation or official to the given circumstances and the need to take steps to eliminate them.

51. Recompense on the basis of Articles 1069 and 1070 of the CC RF for material harm caused to the claimant by unlawful actions (omissions) on the part of state or local government bodies or their officials does not deprive the claimant's right to damages for violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time.

52. Dismissal of a compensation claim is no impediment to filing another such claim if the grounds for this consist in other actual circumstances connected with a different period of protracted consideration of a case, execution of a judicial act or criminal prosecution.

53. Indexation of the awarded damages according to the rules of Article 208 of the CPC RF and Article 183 of the APC RF in connection with non-execution of a judicial act does not deprive an interested party of the right to claim damages under the Compensation Law.

54. A court decision issued after consideration of claim for damages for violation of the right to a trial within a reasonable time or the right to enforcement of a judgment within a reasonable time is appealed in the manner established by the procedural legislation of the Russian Federation.

Execution of a court decision on compensation

55. For the purposes of timely execution of a court decision satisfying a claim for compensation for violation of the right to a trial within a reasonable time or the right to enforcement of a judgment

within a reasonable time, the resolutive part of the decision should specify the amount of the damages, the body responsible for execution of the judicial act on the compensation case, and the bank account details of the compensation claimant to which the awarded damages should be remitted.

In accordance with Article 6 of the BC RF, the financial body specified in Provision 3 Part 2 of Article 5 of the Compensation Law is understood as executive authorities of constituent entities of the Russian Federation that draw up and organise utilisation of the budgets of constituent entities of the Russian Federation (financial bodies of constituent entities of the Russian Federation), bodies (officials) of local municipality administrations drawing up and organising utilisation of local budgets (financial bodies of municipalities).

56. The writ of execution for a court decision awarding damages is to be sent by the court for execution within five days of the decision being issued (Article 428.1 § 2 of the CPC RF, Article 319.3 § 2 of the APC RF).

No application or petition from the claimant is required for the write of execution to be sent.

the right to enforcement of a judgment within a reasonable time is executed in the manner established by Chapter 241 of the BC RF.

Ruling of the Plenary Session of the Supreme Court of the Russian Federation of 31 March 2011 No. 5 Moscow "On Consideration by Courts of Cases on Protection of Electoral Rights and Rights to Participate in a Referendum of Citizens of the Russian Federation"

The constitutional guarantee of protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation is provided by correct and timely consideration by courts of cases on protection of the given rights. Considering the questions facing courts when considering the given category of cases and for the purposes of forming unified court practice, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation resolves to provide courts with the following clarifications:

1. When considering cases of the given category, the courts should be guided by:

the Constitution of the Russian Federation;

Federal constitutional laws of 28 June 2004 No. 5-FKZ "On Referenda in the Russian Federation" (hereinafter Federal Constitutional Law of 28 June 2004 No. 5-FKZ), of 17 December 2001 No. 6-FKZ "On the Manner of Acceptance into the Russian Federation and Formation Therein of a New Constituent Entity of the Russian Federation";

Federal laws of 12 June 2002 No. 67-FZ "On Fundamental Guarantees of Electoral Rights and Rights to Participate in a Referendum of Citizens of the Russian Federation" (hereinafter Federal Law of 12 June 2002 No. 67-FZ), of 10 January 2003 No. 19-FZ "On Presidential Elections to the Russian Federation" (hereinafter Federal Law of 10 January 2003 No. 19-FZ), of 18 May 2005 No. 51-FZ "On Elections of Deputies to the State Duma of the Federal Assembly of the Russian Federation" (hereinafter Federal Law of 18 May 2005 No. 51-FZ), of 6 October 1999 No. 184-FZ "On the General Principles for Organising Legislative (Representative) and Executive State Authorities of Constituent Entities of the Russian Federation", of 26 November 1996 No. 138-FZ "On Securing the Constitutional Rights of Citizens of the Russian Federation to Elect and Elected to Local Government Bodies" (hereinafter Federal Law of 26 November 1996 No. 138-FZ), of 6 October 2003 No. 131-FZ "On the General Principles of Organising Local Government in the Russian Federation" (hereinafter Federal Law of 6 October 2003 No. 131-FZ), of 11 July 2001 No. 95-FZ "On Political Parties"

(hereinafter Federal Law of 11 July 2001 No. 95-FZ), of 10 January 2003 No. 20-FZ "On the State Automated System of the Russian Federation 'Elections'";

constitutions, charters and laws of constituent entities of the Russian Federation, charters of municipalities;

other regulatory and legal acts on elections and referenda adopted in the Russian Federation (Parts 1 and 2 of Article 11 of Federal Law dated 12 June 2002 No. 67-FZ).

2. In accordance with the generally accepted principles and rules of international law and international treaties of the Russian Federation, each citizen has the right and the opportunity to vote and be elected at periodical elections held on the basis of universal and equal suffrage, by secret vote and expressing the free will of the voters without unjustified limitation (Part 3 of Article 21 of the Universal Declaration of Human Rights of 10 December 1948, Article 25 of the International Covenant on Economic, Social and Cultural Rights of 16 December 1966, Article 3 of the European Charter of Local Self-Government of 15 October 1985, Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, the Convention on Standards for Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States of 7 October 2002).

When deciding on applying specific rules of international law, account should be taken of the clarification provided by the Plenary Session of the Supreme Court of the Russian Federation in its ruling of 10 October 2003 No. 5 "On Application by Courts of General Jurisdiction of the Generally Accepted Principles and Rules of International Law and of International Treaties of the Russian Federation".

3. When applying the legislation on elections and referenda, the following should be taken into account.

Protection of human and civil rights and freedoms (including of electoral rights and rights to participate in a referendum of citizens of the Russian Federation) are the joint responsibility of the Russian Federation and its constituent entities (Provision "b", Part 1 of Article 72 of the Constitution of the Russian Federation), in connection with which, laws of constituent entities of the Russian

Federation should not run counter to federal laws (Parts 2 and 5 of Article 76 of the Constitution of the Russian Federation). Laws of constituent entities of the Russian Federation should not, therefore, amend or limit the main guarantees secured in the Federal Law of 12 June 2002 No. 67-FZ allowing citizens of the Russian Federation to exercise their electoral rights and rights to participate in a referendum, though these guarantees may be supplemented with new ones promoting exercise of the given rights (Part 3 of Article 1 of Federal Law dated 12 June 2002 No. 67-FZ).

If, when considering cases on protection of electoral rights and rights of citizens of the Russian Federation to participate in a referendum, the court concludes that a rule of the constitution (charter), a law of a constituent entity of the Russian Federation, or other regulatory and legal act on elections and (or) referenda runs counters to Federal Law of 12 June 2002 No. 67-FZ, it should apply the relevant rule of this Federal Law (Part 6 of Article 1 of the given Federal Law).

4. In accordance with Articles 22 and 245 of the Civil Procedure Code of the Russian Federation (hereinafter the CPC RF), cases relating to claims for protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation are heard by courts of general jurisdiction in consideration of the rules on jurisdiction set by Articles 24, 26 and 27 of the CPC RF, Part 1 of Article 89 of Federal Constitutional Law of 28 June 2004 No. 5-FKZ, Part 1 of Article 31, Part 2 of Article 75 of Federal Law dated 12 June 2002 No. 67-FZ, Part 7 of Article 3 of Federal Law dated 26 November 1996 No. 138-FZ, Part 17 of Article 15, Parts 7–10 and 12 of Article 91 of Federal Law dated 18 May 2005 No. 51-FZ, Parts 4, 5 and 6 of Article 84 of Federal Law dated 10 January 2003 No. 19-FZ.

Justices of the Peace are not entitled to hear cases on protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation according to the rules of Chapter 23 and 26 of the CPC RF, as they are not subject by law to their jurisdiction (Article 23 of the CPC RF).

At the same time, the jurisdiction of Justices of the Peace does include consideration of cases on administrative offences envisaged by the Code of Administrative Offences of the Russian Federation (hereinafter the Code of Administrative Offences of the RF) connected with violation of electoral rights and rights to participate in a referendum of citizens of the Russian Federation, as well as the

procedure for holding elections and referenda. An exception exists in cases of the given category involving an administrative investigation, which fall under the jurisdiction of judges of district courts.

5. Proceeding from the provisions of Article 24 of the CPC RF, the following cases are considered and resolved by district courts:

challenges to actions or omissions (with the exception of omission in the form of evasion of decision-making) of the Central Electoral Commission of the Russian Federation (hereinafter the CEC of Russia), of electoral commissions of constituent entities of the Russian Federation, area electoral commissions on elections to legislative (representative) state authorities of constituent entities of the Russian Federation;

challenges to decisions, actions (omissions) of electoral commissions of a municipality, as well as area electoral commissions on elections to representative bodies of municipalities, territorial and district electoral commissions;

on cancellation of the registration of a candidate, on cancellation of the registration of a candidate included on the candidate registration list, on cancellation of the registration of the list of candidates for municipal elections, as well as on cancellation of the registration of an initiative group for holding a local referendum or another group of participants in such a referendum;

on dissolution of electoral commissions of municipalities, area electoral commissions on elections to representative bodies of municipalities, territorial of electoral commissions, as well as district electoral commissions;

challenges to decisions, actions (omissions) of state and local government bodies, public associations or officials violating voting rights and the right to participate in a referendum of citizens of the Russian Federation;

on scheduling of a local referendum.

6. According to Parts 4 and 5, Part 1 of Article 26 of the CPC RF, Part 2 of Article 75 of Federal Law dated 12 June 2002 No. 67-FZ, Part 7 of Article 3 of Federal Law dated 26 November 1996 No. 138-

FZ, and Part 17 of Article 15 of the Federal Constitutional Law of 28 June 2004 No. 5-FKZ, supreme courts of republics, territory, regional and corresponding courts have jurisdiction over:

challenges to decisions (evasion of decision-making) of electoral commissions of constituent entities of the Russian Federation (irrespective of the level of the elections or the referendum), area electoral commissions on elections to legislative (representative) state authorities of constituent entities of the Russian Federation, with the exception of decisions upholding decisions of lower electoral commissions or referendum commissions;

on cancellation of the registration of a candidate, on cancellation of the registration of a candidate included on the candidate registration list, on cancellation of the registration of the list of candidates for elections to legislative (representative) state authorities of constituent entities of the Russian Federation, as well as on cancellation of the registration of an initiative group for holding a referendum of a constituent entity of the Russian Federation, or other groups of participants in such a referendum;

on dissolution of electoral commissions of constituent entities of the Russian Federation and area electoral commissions on elections to legislative (representative) state authorities of constituent entities of the Russian Federation;

on scheduling elections of deputies to representative (legislative) state authorities of constituent entities of the Russian Federation;

on scheduling elections of deputies to representative local government bodies, members of an elected local government body and elected local government officials envisaged by the charter of a municipality, as well as on establishing the scheduling procedure.

7. By virtue of Provisions 5 and 7, Part 1 of Article 27 of the CPC RF, Part 17 of Article 15, Part 1 of Article 89 of the Federal Constitutional Law of 28 June 2004 No. 5-FKZ, Part 2 of Article 75 of Federal Law dated 12 June 2002 No. 67-FZ, Parts 4, 5 and 6 of Article 84 of Federal Law dated 10 January 2003 No. 19-FZ, Parts 7–10 and 12 of Article 91 of Federal Law dated 18 May 2005 No. 51-FZ, the Supreme Court of the Russian Federation considers the following cases:

challenges to decisions (evasion of decision-making) of the CEC of Russia (irrespective of the level of the elections or referenda), with the exception of decisions upholding decisions of lower electoral commissions and referendum commissions;

on cancellation of the registration of a candidate to the post of President of the Russian Federation, on cancellation of the registration of the federal list of candidates nominated by political parties, on cancellation of the registration of a candidate included on the federal registration list of candidates nominated by political parties, and on excluding a regional group of candidates from the federal list of candidates for elections of deputies to the State Duma of the Federal Assembly of the Russian Federation;

on termination of the activities of an initiative action group or an initiative group for holding a referendum of the Russian Federation;

on dissolution of the CEC of Russia.

8. In cases when the powers of some electoral commissions or referendum commissions are transferred to other electoral commissions or referendum commissions (for example, the powers of area electoral commissions with respect to elections to legislative (representative) state authorities of constituent entities of the Russian Federation are transferred to territorial electoral commissions on the basis of Part 1 of Article 25 of Federal Law dated 12 June 2002 No. 67-FZ), the jurisdiction under which the case falls should be determined in consideration of the level of the commission whose powers are transferred to another electoral commission or referendum commission.

9. If the powers have expired of an electoral commission or referendum commission whose decision, action or omission is being challenged, the exclusive jurisdiction should be determined proceeding from the level of this commission and the level of the elections or the referendum, and the territorial jurisdiction – in consideration of the location of the commission that organised the preparation for and holding of the relevant elections or referendum and is an interested party with respect to the claims entered.

10. Decisions of higher electoral commissions or referendum commissions upholding decisions of lower commissions may be challenged in court together with the decision of the lower commission

that resolved the issue on the merits. The case jurisdiction in such instances is determined depending on the level of the commission whose decision has been appealed to the higher commission.

11. Proceeding from the provisions contained in Parts 21 and 38 of Article 2, Part 1 of Article 28 of Federal Law dated 12 June 2002 No. 67-FZ, decisions of an electoral commission or referendum commission include final decisions taken by the commission board on the issue under consideration and executed in the established format (resolution, decision) or secured in relevant minutes.

Actions of an electoral commission or referendum commission that may be challenged in court include the will of the commission not expressed in the form of a resolution or decision and not secured in relevant minutes, as well as a directive or will of authorised members (by virtue of law or special instruction) of the relevant commission performed thereby for the purposes of exercising the commission's powers to prepare for and hold elections or referenda and other powers delegated to the commission.

An omission on the part of an electoral commission or referendum commission should be understood as failure thereby to fulfil its obligations imposed thereon by regulatory legal and other acts determining the powers of the commission.

Evasion of decision-making, being one form of omission on the part of an electoral commission or referendum commission, should be understood as cases when an electoral commission or referendum commission is required by law to consider a matter at a board session and adopt a decision thereon in the relevant form or secured in relevant minutes (in particular, on the matters specified in Part 13 of Article 28 of Federal Law dated 12 June 2002 No. 67-FZ), but has not fulfilled this obligation.

12. Electors, participants in a referendum, candidates and their representatives, electoral associations and their representatives, political parties and their regional divisions, other public associations, initiative groups for holding a referendum and their authorised representatives, other groups of referendum participants and their authorised representatives, and observers enjoy a different scope of rights and obligations during an election campaign or referendum campaign and may apply to court for protection of these rights, if they deem them to have been violated (Article 3 and Part 1 of Article 4 of the CPC RF).

With respect to individual claims for protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation, federal laws have given an exhaustive list of persons entitled to go to court in connection with violations committed in relation to them or in relation to other persons. Such lists have been established, in particular, for filing the following court claims:

on dissolution of electoral commissions or referendum commissions (Part 4 of Article 259 of the CPC RF, Parts 2, 3, and 4 of Article 31 of Federal Law dated 12 June 2002 No. 67-FZ);

on scheduling elections (Part 9 of Article 10 of Federal Law dated 12 June 2002 No. 67-FZ);

on scheduling of a local referendum (Part 5 of Article 22 of Federal Law dated 6 October 2003 No. 131-FZ);

challenges to decisions of a municipality representative body on holding a local referendum, as well as decisions issued at a local referendum (Part 9 of Article 22 of Federal Law dated 6 October 2003 No. 131-FZ);

challenges to decisions of an electoral commission on registration of a candidate or the list of candidates (Part 6 of Article 76 of Federal Law dated 12 June 2002 No. 67-FZ);

challenges to decisions of an electoral commission refusing to register a candidate or list of candidates (Part 6 of Article 76 of Federal Law dated 12 June 2002 No. 67-FZ);

on cancellation of the registration of a candidate or the list of candidates (Part 3 of Article 259 of the CPC RF, Parts 7, 8, 9 and 12 of Article 76 of Federal Law dated 12 June 2002 No. 67-FZ);

on cancellation of the registration of an initiative group on holding a referendum or another group of referendum participants (Part 5 of Article 259 of the CPC RF, Part 10 of Article 76 of Federal Law dated 12 June 2002 No. 67-FZ).

Prior approach by the claimant to a higher commission or electoral commission of a constituent entity of the Russian Federation or the CEC of Russia is not a mandatory condition for going to court (Part 8 of Article 75 of Federal Law dated 12 June 2002 No. 67-FZ).

13. When clarifying whether a citizen has the voting rights he is asking the court to protect, account should be taken of the following.

The right to vote (active suffrage) and the right be elected (candidate eligibility) to state authorities and local government (passive suffrage), as well as the right to participate in a referendum, belong, as a general rule, to citizens of the Russian Federation (Part 2 of Article 32 of the Constitution of the Russian Federation, Articles 2–4 of Federal Law dated 12 June 2002 No. 67-FZ).

In the meaning of Federal Law dated 12 June 2002 No. 67-FZ, when a person applies to exercise the given rights, his Russian Federation citizenship should be verified.

Proceeding from the provisions of Article 10 of Federal Law dated 31 May 2002 No. 62-FZ "On Citizenship of the Russian Federation", the documents certifying citizenship of the Russian Federation are a duly issued passport of a citizen of the Russian Federation or other basic document stating the individual's citizenship. The documents that may, in the absence of a passport of a citizen of the Russian Federation, certify the identity of such an individual when exercising their electoral rights and rights to participate in a referendum are listed in Part 16 of Article 2 of Federal Law dated 12 June 2002 No. 67-FZ.

Expiry of a document certifying citizenship of the Russian Federation or other circumstances requiring mandatory replacement of a document (such as inclusion in a passport of marks and entries not stipulated by the Regulations on a passport of a citizen of the Russian Federation, approved by decree of the Government of the Russian Federation of 8 July 1997 No. 828, as subsequently amended) do not imply termination of citizenship of the Russian Federation or loss of electoral rights and rights to participate in a referendum.

14. Citizens may apply for judicial protection of their active voting rights (for example, in connection with inaccuracies in the lists of voters, not being provided with an opportunity to receive information or to vote in an election ward) or their passive voting rights (in particular, in connection with refusal to register a candidate), if they believe these rights have been violated.

A citizen's possession of active voting rights is conditioned by, among other circumstances, his place of residence being within the election district and, only in cases provided for by law, may people

residing outside an election district enjoy the given right (Part 4 of Article 4 of Federal Law dated 12 June 2002 No. 67-FZ). Long-term residence within a constituency does not give a citizen active voting rights in elections in the given district unless such rights are granted thereto by law, including by law of a constituent entity of the Russian Federation.

By virtue of Part 5 of Article 4 of Federal Law dated 12 June 2002 No. 67-FZ, passive rights to vote are not connected with the citizen residing in the election district, or how long and for what period a citizen of the Russian Federation has lived in the territory of the district, other than when the Constitution of the Russian Federation sets such limits on passive rights to vote.

15. In accordance with Articles 22–27 of Federal Law dated 12 June 2002 No. 67-FZ, the right to nominate a candidate for membership of electoral commissions is enjoyed only by political parties, electoral associations, other public associations, representatives of municipal bodies, a number of electoral commissions and election meetings. A decision of a state authority, local government body or relevant electoral commission to not include the proposed candidate on the electoral commission may be challenged by a political party, electoral association, public association, representative of a municipal body, electoral commission, election meeting whose legally protected interests are affected by the decision but not by the individual nominated but not included on the electoral commission.

16. When applying the provisions of Part 6 of Article 76 of Federal Law dated 12 June 2002 No. 67-FZ, which lists the persons entitled to challenge a decision of an electoral commission on registration of a candidate (list of candidates) or on refusing to register a candidate (list of candidates), account should be taken of the fact that a candidate included on a candidate registration list is not entitled to challenge registration of the list of candidates for the same electoral district or of individual candidates included on the candidate registration list put forward by the electoral association for the same electoral district.

17. An application may be made to court by other persons for protection of electoral rights and rights to participate in a referendum only in cases expressly specified by federal law (Part 2 of Article 4, Part 1 of Article 46 of the CPC RF).

18. The CEC of Russia, electoral commissions of constituent entities of the Russian Federation, electoral commissions of municipalities, area, territorial and district electoral commissions, and

relevant referendum commissions are entitled to apply to court in connection with violations of the legislation on elections and referenda, including by a state authority, local government body, officials, a candidate, electoral association, political party, its regional division, other public association, initiative group for holding a referendum, other groups of referendum participants, as well as an electoral commission, referendum commission, or member of an electoral commission or referendum commission (Part 6 of Article 68, Part 1 of Article 89 of the Federal Constitutional Law of 28 June 2004 No. 5-FKZ, Part 2 of Article 259 of the CPC RF).

However, these provisions should be applied in consideration of the rules securing the right of a commission of a certain level to file specific court claims connected with violation of the electoral rights and rights to participate in a referendum of citizens of the Russian Federation.

For instance, after establishing the results of elections or referenda, a superior electoral commission may enter a court challenge to a decision by a lower commission on the results of the voting or the results of the election or the referendum (Part 11 of Article 77 of Federal Law dated 12 June 2002 No. 67-FZ).

19. A public prosecutor is entitled apply to court in the manner established by Chapter 26 of the CPC RF in cases envisaged by:

Part 1 of Article 45 of the CPC RF in protection of the voting rights or rights to participate in a referendum of an individual citizen whose state of health, age or some other good reason prevents him from going to court;

Part 1 of Article 259 of the CPC RF in protection of public interests, if decisions, actions (omissions) of a state authority, a local government body, public association, electoral commission or referendum commission or an official violate the voting rights or the right to participate in a referendum of citizens of the Russian Federation.

20. Part 1 of Article 78 of Federal Law dated 12 June 2002 No. 67-FZ, in accordance with which the court of the relevant level is not entitled to refuse to accept a claim relating to violation of electoral rights or rights to participate in a referendum of citizens of the Russian Federation, is subject to application to conjunction with the rules contained in Articles 3, 4, 134 and 259 of the CPC RF. For

instance, if a claim is filed by someone not entitled to do so, the given claim should not be accepted, the refusal being based on Provision 1, Part 1 of Article 134 of the CPC RF (for example, if a claim filed in someone's own name challenges a decision, action (omission) not affecting the claimant's voting rights or right to participate in a referendum).

21. Absence of the right to file a court claim for protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation in the manner of Chapter 26 of the CPC RF may not be overcome by the same person filing a claim according to the rules of Chapter 25 of the CPC RF challenging an omission on the part of a body or person entitled to go to court in the manner of Chapter 26 of the CPC RF. In particular, in the event that an individual who is not a registered candidate for an election ward files a court claim according to the rules of Chapter 25 of the CPC RF for invalidation of an omission by an electoral commission in connection with violation by a candidate registered for this election ward of the rules for conducting an election campaign or bribing voters, or for obliging the electoral commission to apply to court for this candidate's registration to be cancelled.

22. A claim for protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation should meet the requirements specified by Paragraph 2, Part 1 of Article 247 and Article 131 of the CPC RF, in consideration of the specific proceedings on cases of the given category established by Chapters 23 and 26 of the CPC RF. It should specify, in particular, which decisions, actions (omissions), in the claimant's opinion, are unlawful and in which the violation of electoral rights or rights to participate in a referendum exist.

Attached to the claim should be: a copy of the claim, a document confirming payment of state duty, a power of attorney or other document certifying the powers of the claimant's representative, information confirming that the disputed decisions were actually taken and that the challenged actions or omissions were actually performed (Part 1 of Article 246, Article 132 of the CPC RF).

Account should be taken of the fact that, on cases of the given category, individuals should pay state duty, with the exception of persons entitled to benefits when applying to a court of general jurisdiction in accordance with Article 333 [36] of the Tax Code of the Russian Federation (hereinafter the TC RF). Other legally capable persons in accordance with Article 259 of the CPC RF are not released from payment of state duty when applying to court in connection with violations of the legislation on

elections and referenda, other than the public prosecutor and those electoral commissions that are state bodies (Provisions 9 and 19 of Part 1 of Article 333 [36] the TC RF).

The provisions of Part 2 of Article 333 [20] and of Part1 of Article 333 [41] of the TC RF permit a court (judge), on the basis of a petition from the claimant, to reduce the sum of state duty or permit its payment instalment or payment deferral, proceeding from the material status of the claimant. At the same time, the specified provisions do not prevent the court (judge) from satisfying a petition from the claimant for deferral of payment of state duty in connection with the given person actually being unable to pay it on the day on which the claims, by virtue of Part 6 of Article 260 of the CPC RF, are subject to immediate consideration and resolution, i.e., if credit institutions are already closed and there are no, or only non-operating payment terminals or ATMs. Otherwise, the claimant would be impeded in exercising his rights to judicial protection, as guaranteed by Article 46 of the Constitution of the Russian Federation.

Having established a claim does not meet the given requirements, in accordance with Part 1 of Article 136 of the CPC RF, the judge issues a ruling on leaving the claim without action and designates a minimum necessary period for remedying the shortcomings in the claim. If the requirements contained in the ruling are not fulfilled or duly fulfilled, the claim is deemed not to have been filed and is returned to the claimant (Part 2 of Article 136 of the CPC RF).

23. Article 260 of the CPC RF and Articles 31 and 78 of Federal Law dated 12 June 2002 No. 67-FZ set the time-limits for filing a court claim (including shortened time-limits) with the duration of these time-limits depending on the stage of the election campaign or referendum campaign and the nature of the claims.

Courts should verify compliance with these time-limits and, if they have been missed, discuss whether it is permissible to reinstate them while giving the claimant an opportunity to indicate the reasons for why the time-limits for filing a court claim were missed.

The time-limits for filing court claims concerning the decisions of an electoral commission on the registration or denial of registration to a candidate (list of candidates), an initiative group on holding a referendum or another group of referendum participants, on the certification or denial of certification to a list of candidates or a list of candidates for single-member (multi-member) constituencies as well

as for the cancellation of the registration of a candidate (list of candidates) are set by Parts 2 and 3 of Article 260 of the CPC RF and Parts 2 and 5 of Article 78 of Federal Law dated 12 June 2002 No. 67-FZ. These time-limits shall not be reinstated regardless of the reasons why they were missed.

According to Part 5 of Article 260 of the CPC RF, the time-limits for filing a claim seeking the dissolution of an electoral commission or referendum commission are determined in accordance with Part 5 of Article 31 of Federal Law dated 12 June 2002 No. 67-FZ. These time-limits shall not be reinstated either.

Upon establishing that the shortened filing time-limits not subject to reinstatement have been missed, proceeding from the provisions of Part 6 of Article 152 and Part 4 of Article 198 of the CPC RF, the court shall reject the claim at the preliminary court session or court session, citing only the establishment of the particular circumstance in the reasoning of the decision.

24. The general three-month time-limit for filing a court claim set by Part 1 of Article 260 of the CPC RF may be reinstated by the court if missed by the claimant for good reason.

If a time-limit is missed without good reason, this constitutes independent grounds for rejecting a claim, which must be substantiated in the court decision (Part 6 of Article 152, Part 4 of Article 198 of the CPC RF).

The one-year filing time-limit set by Part 4 of Article 260 of the CPC RF is subject to reinstatement regardless of the reasons why it was missed.

If a one-year time-limit is missed, this constitutes independent grounds for dismissing a claim, which must be substantiated in the court decision (Part 6 of Article 152, Part 4 of Article 198 of the CPC RF).

25. Proceeding from the provisions of Part 1 of Article 154 of the CPC RF, cases on protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation should be considered and decided by the court within two months of the claim being filed with the court, with the exception of instances when other periods are set for consideration and resolution of cases.

During an election campaign or referendum campaign, a claim received by the court before election day should be considered and resolved within five days of it being filed, but no later than the day preceding election day, whereas a claim filed on the day preceding election day, election day or the day following election day – immediately. If the facts stated in the claim require additional verification, the claim should be considered and resolved within a maximum of ten days of its filing (Part 6 of Article 260 of the CPC RF).

When considering and resolving claims regarding inaccuracies in registers of voters or of referendum participants, claims relating to decisions of an electoral commission or referendum commission on voting results, on the results of elections or a referendum, as well as claims for dissolution of an electoral commission or referendum commission, the terms set by Parts 7, 8 and 11 of Article 260 of the CPC RF, respectively, should be kept in mind.

Expiry of the time periods envisaged by Part 1 of Article 154 and by Parts 6, 7 and 8 of Article 260 of the CPC RF does not, in itself, impede consideration and resolution by the court of cases on protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation and may not entail termination of the proceedings in the case.

Decisions on claims for cancellation of the registration of a candidate (list of candidates), of an initiative group on holding a referendum or other group of referendum participants may be issued by the court no later than the deadlines stipulated by Parts 9 and 10 of Article 260 of the CPC RF. However, these deadlines do not apply to cases based on challenges to decisions of an electoral commission or referendum commission on the registration or refusal to register a candidate (list of candidates), an initiative group on holding a referendum or other group of referendum participants.

Occurrence of the final date for issue by the court of a decision cancelling registration of a candidate (list of candidates), an initiative group on holding a referendum or other group of referendum participants does not, in itself, constitute grounds for terminating the proceedings in the case.

Expiry of the time period specified by Parts 9 and 10 of Article 260 of the CPC RF excludes the possibility of cancelling the registration of a candidate (list of candidates), initiative group on holding a referendum or other group of referendum participants. Consequently, having established the actual

circumstances of the case, the court dismisses the claim even if there are grounds for cancelling the registration.

26. Article 111 of Federal Law dated 12 June 2002 No. 67-FZ (introduced by Federal Law of 21 July 2005 No. 93-FZ) provides the procedure for calculating the time periods established by the legislation of the Russian Federation on elections and referenda, which differs from the rules established by Chapter 9 of the CPC RF.

The given rule determines the procedure for calculating time periods connected with application of the legislation on elections and referenda and does not apply to calculating the procedural time periods, including those for filing a claim, as the rules for calculating these are stipulated by Articles 107 and 108 of the CPC RF. At the same time, if the date by which the court may issue a decision on the claims specified in Parts 9, 10 and 11 of Article 260 of the CPC RF falls on a non-working day, by virtue of Part 11 of Article 75 of Federal Law dated 12 June 2002 No. 67-FZ, the court is required to provide consideration of such a case even on a non-working day.

27. The court should, apart from the person indicated in Part 1 of Article 2601 of the CPC RF, summon as participants in a case on protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation other persons whose rights and legally protected interests might be affected by the court's decision.

Thus, if a registered candidate challenges a decision of an electoral commission on registration of another candidate for the same constituency, such interested parties also include the candidate whose registration is being challenged.

If the term of authority of an area or district electoral or referendum commission whose decision or action (omission) is being challenged has expired, the commission that organised the preparation for and holding of the relevant elections or referendum should be called to participate in the case as an interested party.

Failure by a person summoned to participate in a case when duly notified of the time and place of the court session to appear in court does not impede consideration and resolution of the case (Part 1 of Article 260 of the CPC RF).

28. The provisions of Chapter 13 of the CPC RF on measures for securing a claim apply to cases based on claims for protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation with the limitations set by Part 3 of Article 2601 of the CPC RF on application during an election campaign or referendum campaign, until the results of the elections or the referendum are published, of such measures as arrest of election or referendum ballot papers, lists of voters or of referendum participants, other documents relating to elections or referenda and their seizure; a ban on electoral and referendum commissions performing actions established by law for preparing and holding an election or referendum.

Proceeding from the provisions of Article 139 of the CPC RF, the court is entitled to take measures to secure claims at any stage of the proceedings on a case, if failure to do so might make enforcement of a decision difficult or impossible. Whereat the given measures should not entail unfounded violation of voters' rights and freedoms or create impediments to the electoral commissions fulfilling the powers granted to them by the legislation.

29. When considering cases connected with inclusion of a citizen of the Russian Federation on the electoral roll or list of referendum participants, it should be borne in mind that the lists for a specific constituency or referendum district includes citizens of the Russian Federation possessing active suffrage or referendum participation rights on voting day and residing, in cases provided for by law cases, staying temporarily on the territory this district or holding an absentee voting certificate (Parts 2 and 4 of Article 17 of Federal Law dated 12 June 2002 No. 67-FZ). The cases when a voter or referendum participant possessing active suffrage or referendum participation rights may be included on the list of election or referendum voters at their place of temporary stay (their actual location) are listed in Part 17 of Article 17 of the given Federal Law. In accordance with Part 5 of Article 19 of Federal Law dated 12 June 2002 No. 67-FZ, places of temporary stay include, in particular, hospitals, sanatoria, rest homes, and remand facilities. Military personnel serving as conscripts in military division, organisation and institutions located on the territory of the relevant municipality are included on the electoral rolls for elections to local government bodies and list of participants in a local referendum if the place of residence of the military personnel before they were called up was located on the territory of the given municipality (Part 5 of Article 17 of Federal Law dated 12 June 2002 No. 67-FZ).

30. When considering challenges to decisions of an electoral commission or referendum commission refusing to register a candidate or list of candidates or refusing to hold a referendum on the grounds specified by Provision “e” of Part 24 and Provision “d” of Part 25 of Article 38 of Federal Law dated 12 June 2002 No. 67-FZ (an insufficient number of true signatures for registration or more than the set limit for untrue and (or) invalid signatures), the court should take into account that Federal Law of 31 May 2001 No. 73-FZ “On State Forensic Expert Review Activities in the Russian Federation” does not apply to relations connected with verification of voter or referendum participant signatures. The procedure for verifying such signatures is set by Parts 3–7 of Article 38 of Federal Law dated 12 June 2002 No. 67-FZ.

The rules for executing signature sheets (including the rules for mandatory inclusion thereon of the details of the voters or referendum participants) are envisaged by Article 37 of Federal Law dated 12 June 2002 No. 67-FZ.

The residential address of an election voter or referendum participant is understood, in accordance with Part 5 of Article 2 of Federal Law dated 12 June 2002 No. 67-FZ, as the address (name of a constituent entity of the Russian Federation, district, city, other population centre, street, building number, apartment), at which a citizen of the Russian Federation is registered as residing at citizens’ place of stay and residence registry offices within the Russian Federation.

The residential address that should be indicated on the signature sheet irrespective of the level of the elections or referendum may not contain all the details set out above in view of the actual specifics of the election voter or referendum participant’s place of residence. For instance, the relevant information is not indicated if there are not street names in population centres and (or) building or apartment numbers, as well as names of population centres, should the citizen live, for example, in an area between population centres.

31. Proceeding from Part 6 of Article 76 of Federal Law dated 12 June 2002 No. 67-FZ, a decision on registration of a candidate (list of candidates) may be cancelled by the court, if it is established that the electoral commission passed this decision in violation of the requirements of the laws, including the provisions of Parts 24-26 of Article 38 of the given Federal Law, on the circumstances that were in

place at the time the electoral commission considered the question of registration of a candidate (list of candidates) and precluded registration of the candidate (list of candidates).

Registration of a candidate (list of candidates) may be cancelled on the grounds specified in Parts 7–9 of Article 76 of Federal Law dated 12 June 2002 No. 67-FZ, for violations of the legislation on elections committed after the candidate (list of candidates) is registered, as well as for a series of significant violations of the legislation that had already occurred when the electoral commission was considering the question of registering the candidate (list of candidates) and were an impediment to registration of a candidate (list of candidates), but they were not and could not have been known to the electoral commission, for example, in connection with for example, the candidate concealing information about having a criminal record.

32. When considering challenges to decisions of an electoral commission excluding a candidate from a certified list of candidates, cancelling the registration of a candidate included on a candidate registration list, as well as claims for cancellation of the registration of a candidate included on a candidate registration list, it should be kept in mind that Federal Law of 12 June 2002 No. 67-FZ contains an exhaustive list of the grounds on which a candidate may be excluded from a certified list of candidates by an electoral commission when the latter issues a decision on a candidate registration list (Part 26 of Article 38), an electoral commission may be cancelled (Parts 1, 2 and 3 of Article 76) and a court (Part 9 of Article 76) cancels the registration of a candidate included on a candidate registration list. The grounds so listed are dictated by circumstances excluding the possibility of a citizen participating in elections as a candidate or connected with violation thereby of the requirements of the election legislation.

Individual candidates included by an electoral association on a list of candidates registered by an electoral commission may be excluded from this list by the electoral association in the manner envisaged by its charter (Part 32 of Article 38 of Federal Law dated 12 June 2002 No. 67-FZ, Provision “k” of Part 2 of Article 21 of Federal Law dated 11 July 2001 No. 95-FZ). Bearing in mind the given provisions, courts should verify the powers of the electoral association body that takes the given decision and observance thereby of the decision-making process. For these purposes, they should demand a copy of the charter of the electoral association regulating the procedure for nominating candidates (lists of candidates), as well as exclusion of candidates from such lists.

In addition, courts should take into account the fact that a decision of an electoral association excluding an individual from the list of candidates put forward thereby and registered by an electoral commission may not be arbitrary; it must be reasoned and conditioned by specific actions (omissions) on the part of the given person that are not compatible with the legitimate interests of the electoral association.

33. When considering cases on cancellation of the registration list of candidates in connection with failure by a candidate included on such a list to observe the restrictions envisaged by Part 1 of Article 56 of Federal Law dated 12 June 2002 No. 67-FZ, and performance by the candidate of the actions specified in Provision "zh" of Part 8 of Article 76 this of the Federal Law, account should be taken of the fact that the electoral association is granted the right, before a court decision on the case is issued, to exclude from its proposed list the candidate whose actions served as the reason for going to court (Parts 8 and 11 of Article 76 of the given Federal Law). Such a decision by an electoral association constitutes grounds for the court to terminate the proceedings on the case.

34. Federal Law of 12 June 2002 No. 67-FZ establishes that information provision for elections and referenda includes informing voters and referendum participants and pre-election canvassing and campaigning concerning the subject of a referendum (Article 44, Parts 2 and 5 of Article 45, Parts 1 and 5 of Article 50). Considering this, the court should distinguish between the activities of organisations issuing media on providing voters and referendum participants with information and use of the media for pre-election canvassing and campaigning concerning the subjects of a referendum.

In contrast to canvassing, provision of information is not intended to prompt voting for or against specific candidates or lists of candidates, to support or refuse to support an initiative to hold a referendum, to vote or refuse to vote in a referendum, or support or reject the question raised in the referendum.

Organisations issuing media are not deprived of the right to express their opinion, comment on an election or referendum campaign, provided this is outside information blocks.

When assessing the true character of announcements on pre-election events or ones connected with a referendum, the aggregate of all factors needs to be clarified that characterise the extent of the circulation and impact on voters and referendum participants by information material or

announcements on such events. In particular, account should be taken of the type of media resource, television- or radio-programme (informational, informational-analytical, general interest, individual project and the like), the format in which the material is set out and its character (neutral, positive or negative), its information value, the content of statements communications) by persons representing an electoral associations or invited to a pre-election event.

The procedure for providing information during elections may be recognised as having been violated by organisations issuing media or representatives of the media if the requirements of the legislation are not observed with respect to objectivity, accuracy of the content of information placed in the media, equality of candidates and electoral associations, including during distribution during information blocks of the time allocated to coverage of pre-election activities of electoral associations, candidates or initiative groups on holding a referendum, or if representatives organisations issuing media perform deliberate actions campaigning or encouraging voting for or against specific candidates or electoral associations (Part 21 of Article 48 of Federal Law dated 12 June 2002 No. 67-FZ).

If, in the guise of providing voters or referendum participants with information, organisations issuing media, or other persons, organisations, state authorities, local government bodies specified in Part 7 of Article 48 of Federal Law dated 12 June 2002 No. 67-FZ, perform actions recognised, by virtue of Parts 2 and 21 of Article 48 of Federal Law dated 12 June 2002 No. 67-FZ, as pre-election campaigning, such actions may form the objective side of indicia of administrative offences envisaged by Articles 5.5, 5.8, 5.10, 5.11, and 5.12 of the Code of Administrative Offences of the RF.

35. When applying Part 11 of Article 56 of Federal Law dated 12 June 2002 No. 67-FZ prohibiting campaigning that breaks the laws of the Russian Federation on intellectual property, courts should remember that, since 1 January 2008, relations in the intellectual property sphere (protection of intellectual products and means of identification) have been regulated by Part 4 of the Civil Code of the Russian Federation (hereinafter the CC RF). Failure to observe the requirements established by Part 4 of this Code (in particular, use of intellectual products and means of identification without the consent of the author or other right holder and, if their use is permitted without the consent of the author or other right holder – non-observance of the conditions for such use) should be classed by courts as a violation of the legislation of the Russian Federation on intellectual property.

The requirements of Article 1276 of the CC RF during election campaigning are violated when campaign materials are reproduced without the consent of the author or payment of a fee, a photographic work, work of architecture or of fine art is aired or transmitted by cable if there is free access to their permanent location, and the image of the work is thus the main subject of this reproduction, airing or transmission by cable.

Violations of the legislation of the Russian Federation on intellectual property established by a court and committed during preparation of campaign material that is not actually used for campaign purposes (for example, the entire batch of campaign materials is destroyed) may not serve as a pretext for refusing to register a candidate or list of candidates, refusing to hold a referendum, excluding a candidate from a certified list of candidates, cancelling the registration of a candidate, list of candidates or a candidate included on a candidate registration list, on the basis of Provision "k" of Part 24, Provision "i" of Part 25, Provision "v" of Part 26 of Article 38, Provision "d" of Part 7, Provision "d" of Part 8 or Part 9 of Article 76 of Federal Law dated 12 June 2002 No. 67-FZ.

36. Candidates holding federal or elected municipal posts, candidates fulfilling state or municipal services or others listed in Part 1 of Article 40 of Federal Law dated 12 June 2002 No. 67-FZ, are not entitled, during their election campaigns to use the advantages of their position or official status.

Actions that may be considered as use of the advantages of position or official status during an election or referendum campaign are listed in Part 5 of Article 40 of Federal Law dated 12 June 2002 No. 67-FZ and this list is not subject to expansive interpretation.

When deciding whether use of the advantages of position or official status constitutes sufficient grounds for the court to apply the adverse effects specified by Federal Law of 12 June 2002 No. 67-FZ to a candidate, electoral association or initiative group on holding a referendum, it is necessary, in particular, to determine how often these actions have been performed, the character, content, and purpose.

Whereat account should be taken of the fact that only repeat (at least two times) use of the advantages of position or official status may serve as grounds for refusing to register a candidate or list of candidates, for refusing to hold a referendum, for excluding a candidate from the certified list of candidates, for cancelling the registration of a candidate or list of candidates, or a candidate included

on the candidate registration list (Provision “l” of Part 24, Provision “k” of Part 25, Provision “g” of Part 26 of Article 38, Provision “v” of Part 7, Provision “v” of Part 8, Part 9 of Article 76 of Federal Law dated 12 June 2002 No. 67-FZ).

37. When deciding whether there has been bribery of voters or referendum participants, courts should clarify the following circumstances:

whether the actions performed are on the list of those that, in accordance with Part 2 of Article 56 of Federal Law dated 12 June 2002 No. 67-FZ, may be recognised as bribery of voters or referendum participants, remembering that the given list is not subject to expansive interpretation;

whether the actions were performed during an election or referendum campaign;

whether the nature of the actions performed allows the conclusion that they motivated or motivate voters or referendum participants:

to vote for or against a candidate, candidates, list, lists of candidates, to support the initiative of holding a referendum or refuse to do so, to vote or refrain from voting in a referendum, support or reject the question raised in the referendum;

in relation to which persons the actions were performed. If the actions were performed in relation to minors without active suffrage (for example, if gifts containing campaign materials are handed out to minors), it should be remembered that such actions do not remain outside the purview of the children’s legal representatives – their parents, so may be considered as bribery if the parents are voters in the relevant constituency;

whether the persons who have performed the actions identified in Part 2 of Article 56 of Federal Law dated 12 June 2002 No. 67-FZ are among those whose actions to bribe voters or referendum participants entail corresponding unfavourable consequences for a candidate, electoral association or initiative group on holding a referendum. Bribery of voters or referendum participants by the persons specified in Parts 2 and 4 of Article 77 of Federal Law dated 12 June 2002 No. 67-FZ presupposes that such actions are performed directly by them or other persons on their instructions or with their knowledge.

38. If decisions of an electoral commission or referendum commission refusing to register a candidate or list of candidates or refusing to hold a referendum are being challenged in connection with the court having established the fact of bribery of voters or of referendum participants (Provision “o” of Part 24, Provision “n” of Part 25 of Article 38 of Federal Law dated 12 June 2002 No. 67-FZ), the court should clarify whether, when the relevant commission took the disputed decision, there were any court rulings that had come into legal force on imposing administrative liability as envisaged by Article 5.16 of the Code of Administrative Offences of the RF, or any court verdict on criminal liability under Provision “a” Part 2 of Article 141 or Part 2 of Article 142 of the Criminal Code of the Russian Federation establishing the fact of bribery.

39. Grounds for the court to cancel a decision of a relevant electoral commission or referendum commission on the results of voting or the results of elections or a referendum consist in the violations listed in Provisions “b”, “v”, “g” of Part 2, Parts 3 and 4 of Article 77 of Federal Law dated 12 June 2002 No. 67-FZ, on the condition that they do not permit the true will of the voters or referendum participants to be determined, as well as the violations specified in Provision “a” of Part 2 of Article 77 of the given Federal Law dated 12 June 2002 No. 67-FZ.

If in a challenge to decisions on the results of voting or results of elections or a referendum taken by other than district electoral commissions or referendum commissions, the claimant refers to violations of the legislation on elections and referenda in electoral constituencies or referendum districts and (or) to violations committed by the district commissions themselves in tallying the votes and drawing up the protocol on the results of the voting, what is actually being challenged is the decisions of the relevant district commissions. If consideration of claims for decisions of district electoral commissions or referendum commissions on the results of voting to be recognised as unlawful does not fall under the jurisdiction of the given court, an application in relation to such claims is returned to the applicant on the basis of Provision 2 Part 1 of Article 135 of the CPC RF, since the legality of decisions made by district commissions may be verified by the court responsible by law for considering the case. Otherwise, this would run counter to the provisions Part 1 of Article 47 of the Constitution of the Russian Federation.

Proceeding from the provisions of Part 1 of Article 261 of the CPC RF, Parts 11 and 9 of Article 77 of Federal Law dated 12 June 2002 No. 67-FZ, in the event that a decision of a commission on the results

of voting, results of elections or a referendum is cancelled, the court is entitled to issue a decision on a recount of the votes of voters or of referendum participants. Moreover, if the committed violations prevent definitive determination of the will of the voters or referendum participants, it is entitled to recognise the results of the voting or results of the election or referendum as invalid. If errors or discrepancies are identified in the protocols on the results of voting and (or) summary tables on the results of voting, or doubts arise as to whether the protocols and (or) summary tables have been drawn up correctly, the court is not entitled to count the votes and determine the results of the elections or the referendum, since, by virtue of the provisions of Part 1 of Article 70, Part 11 of Article 77 of Federal Law dated 12 June 2002 No. 67-FZ, a decision on these matters falls within the terms of reference of the relevant electoral commission or referendum commission. In this case, the decision states the need for the commission to perform a recount of the votes of voters or referendum participants.

If the term of the relevant commission's powers has expired, the court is not entitled to determine which commission should carry out the recount of the votes. A decision on this is to be made by the commission that organised the preparation for and holding of the elections or the referendum.

40. Chapter 23 and 26 of the CPC RF do not contain specifics relating to the possibility of the court announcing the resolutive part of a decision and deferring drawing up the motivated court decision in cases concerning protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation. Consequently, in cases of the given category, by virtue of Part 1 of Article 246 of the CPC RF, the court is entitled to announce only the resolutive part of the decision (Part 2 of Article 193 and Article 199 of the CPC RF). At the same time, on cases considered during an election campaign or referendum campaign before voting day, measures should be taken to draw up a reasoned decision as quickly as possible, in consideration of the set five-day period for filing an appeal on such cases.

The powers of the court issuing a decision on a case involving protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation are contained in Parts 1 and 2 of Article 261 of the CPC RF.

Having recognised as unlawful a disputed decision or action (omission) by a state authority, a local government body, public association, electoral commission or referendum commission, or official, the

court satisfies the claim and charges the given bodies and persons with restoring in full the violated voting rights or right to participate in a referendum.

If the claim was based on omissions by relevant bodies or officials, in order to ensure the conditions for exercise of electoral rights and rights to participate in a referendum, the court decision requires them to perform certain actions.

In regard to decisions determining the period for setting an election date, in accordance with Part 9 of Article 3 of Federal Law dated 26 November 1996 No. 138-FZ, Part 9 of Article 10 of Federal Law dated 12 June 2002 No. 67-FZ, the court specifies: the grounds for determining the time for scheduling elections, the electoral commission that should set the date, and the term within which election date should be set; the regulatory and legal act on the basis of which the elections will be held; the term of the powers and number of deputies of the representative local government body; the name of the local government elective office and the term of the power of the person filling this position, and so on

In the event of a decision of an electoral commission refusing to register a candidate or list of candidates (Part 6 of Article 76 of Federal Law dated 12 June 2002 No. 67-FZ) being cancelled, the court is entitled to charge the commission with registering the candidate or list of candidates, unless other grounds for refusing registration were established during the consideration of the case.

41. In accordance with Part 3 of Article 261 of the CPC RF, an appeal (a private complaint) may be lodged against a decision (ruling) issued by a court on the given category cases during an election campaign or referendum campaign, before voting day (irrespective of the type of electoral dispute), within five days of the court decision (ruling) being issued.

Decisions (rulings) issued by courts on or after election/voting day may be appealed on general grounds (Articles 338, 372 of the CPC RF) within ten days of the final decision being issued (from issue of the ruling by the court of the first instance).

42. Appeals by a public prosecutor on a case relating to registration of a candidate (list of candidates), refusal to register a candidate (list of candidates), exclusion of a candidate from the certified list of candidates, cancellation of the registration of a candidate (list of candidates) that are received by a

court of the cassation instance during an election campaign before voting day should, in accordance with Part 31 of Article 348 of the CPC RF, be considered no later than the day preceding voting day.

Whereat registration of a candidate (list of candidates) may be cancelled by a court of the cassation instance no later than two days before voting day.

If a court of the cassation instance considering an appeal or submission by a public prosecutor against a court decision dismissing a claim for cancellation of the registration of a candidate (list of candidates) later than two days before voting day concludes that the cassation/submission arguments are justified, it cancels the decision of the court of the first instance and issues a new decision dismissing the claim on the grounds of expiry of the period during which cancellation of the registration of a candidate (list of candidates) is permitted.

43. Decisions on cases relating to protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation come into legal force according to the general rules specified by Part 1 of Article 209 of the CPC RF: on expiry of the term for an appeal, if they are not appealed and, in the event that an appeal is filed, after consideration of the case by the court of the cassation instance, unless the court decision is cancelled.

44. In accordance with Article 210 of the CPC RF, decisions on cases relating to protection of electoral rights and rights to participate in a referendum are executed once they come into legal force, with the exception of decisions on including a citizen on the list of voters or referendum participants and on scheduling municipal elections, which, in accordance with Article 211 of the CPC RF and Part 9 of Article 3 of Federal Law dated 26 November 1996 No. 138-FZ, are subject to immediate execution.

A court decision on cancellation of the registration of a candidate (list of candidates) by virtue of Part 4 of Article 2601 of the CPC RF may not be executed immediately.

The court is entitled to appoint immediate execution of decisions on other cases relating to protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation only on the initiative of the claimants and given the circumstances specified in Part 1 of Article 212 of the CPC RF.

A court decision that has come into legal force is sent to the head of the relevant state authority, local government body, public association, chairman of the electoral commission or referendum commission, or official and is subject to execution by the times set by the court (Part 1 of Article 261 of the CPC RF).

According to Article 6 of the Federal Constitutional Law of 31 December 1996 No. 1-FKZ "On the Judicial System in the Russian Federation", Part 8 of Article 5 of the Federal Constitutional Law of 7 February 2011 No. 1-FKZ "On Courts of General Jurisdiction in the Russian Federation" and Part 3 of Article 75 of Federal Law dated 12 June 2002 No. 67-FZ, execution of a court decision is mandatory and such a decision serves as sufficient grounds, in particular, for registration of a candidate or list of candidates (reinstatement of their registration), without requiring any confirmation on the part of the relevant commission.

45. When considering the given category of cases, courts should pay attention to any shortcomings identified in the activities of electoral commissions or referendum commissions, public associations or officials furthering violation of electoral rights and rights to participate in a referendum of citizens of the Russian Federation and (or) impeding correct and timely consideration and resolution of cases of the given category, using the right granted to them by Part 1 of Article 226 of the CPC RF to issue a partial ruling.

Ruling of the Plenary Session of the Supreme Court of the Russian Federation of 7 April 2011 No. 6 Moscow "On Application by Courts Compulsory Measures of a Medical Nature"

In connection with questions arising for courts when prescribing, extending, amending or terminating application of compulsory measures of a medical nature, and for the purposes of forming unified application of the legislation during consideration of cases of the given category, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation,

resolves:

1. To draw the attention of courts to the fact that, during proceedings on application of compulsory measures of a medical nature, the Constitution of the Russian Federation, rules of the criminal, criminal procedural and criminal-penal legislation should be strictly observed. When deciding separate issued connected with application of compulsory measures of a medical nature, the courts should be guided by the provisions of the Fundamentals of the legislation of the Russian Federation on public health of 22 July 1993 No. 5487-I, Law of the Russian Federation of 2 July 1992 No. 3185-I "On Psychiatric Care and Guarantees of the Rights of Citizens During Its Provision", Federal Law dated 31 May 2001 No. 73-FZ "On State Judicial Forensic Activities in the Russian Federation", Federal Law dated 7 May 2009 No. 92-FZ "On Guarding of Psychiatric Hospitals (in-Patient Facilities) of a Specialised Type with Intensive Care", as well as other normative and regulatory acts, including decree of the Government of the Russian Federation of 6 February 2004 No. 54 "On Medical Certification of Convicts Released from Detention on Health Grounds", order of the Ministry of Health and Social Development of the Russian Federation and of the Ministry of Justice of the Russian Federation of 17 October 2005 No. 640/190 "On the Procedure for Organising Medical Care for Persons Serving a Sentence in Institutions of Confinement and Held in Custody".

During proceedings on application of compulsory measures of a medical nature, courts should take account of the provisions of international acts and the practice of the European Court of Human Rights. In particular, the Standard Minimum Rules for the Treatment of Prisoners (Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders of August 1955) envisage a provision to the effect that persons who are found to be insane shall not be detained

in prisons and arrangements shall be made to remove them to mental institutions as soon as possible (rule 82 (1). The principles for protecting persons with mental illness and improving psychiatric care (approved by Ruling of the UN General Assembly of 17 December 1991 46/119) specify that, in relation to persons that have performed acts prohibited by law, if they are determined to have a mental illness or it is believed may have such an illness, the general principles of protection shall apply to them to the fullest extent possible, with only such limited modifications and exceptions as are necessary in the circumstances, which shall not prejudice their rights (principle 20).

When deciding matters connected with amending, extending or terminating application of compulsory measures of a medical nature in relation to persons, handed over to the Russian Federation in accordance with the Convention on Transfer of Mentally Disordered Persons for Compulsory Treatment (28 March 1997), courts should bear in mind the provisions of the given Convention.

2. To clarify that compulsory measures of a medical nature are measures of a criminal law nature and are only applied to those who have a socially dangerous act specified by criminal law in a state of criminal incapacity or became of unsound mind after committing the crime, this precluding handing down a sentence of executing it, as well as to persons who have committed a crime and suffer from a psychiatric disorder that does not incapacitate them in criminal terms, but only on the condition that the psychiatric disorder is connected with the possibility of these persons causing other material harm or with a danger to themselves or to others (Part 1 and 2 of Article 97 of the CC RF). Whereat the purposes of applying compulsory measures of a medical nature differ from those of applying a punishment and, by virtue of Article 98 of the CC RF, consist in curing or improving the psychiatric condition of the given persons, as well as precluding them from performing other socially dangerous acts envisaged by criminal law.

3. Compulsory measures of a medical nature in the form of outpatient compulsory observation and treatment by a psychiatrist, compulsory treatment in a psychiatric facility (of a general type, specialised type or specialised type with intensive care) may be applied by the court to a person:

who has committed a socially dangerous act envisaged by criminal law in a state of criminal incapacity, i.e., when this person, when committing the act, was not aware of the true nature or social danger of his actions (omissions) or lacked control over the actions as a result of a chronic

psychological disorder, temporary psychological disorder, mental disability or other disease of the mind. Such a person is not subject to criminal liability (Part 1 of Article 21 of the CC RF); who, after committing a crime, becomes of unsound mind, this depriving him of the possibility of being aware of the true nature and social danger of his actions (omissions) or control of them, this precluding a punishment being handed down or executed. Such a person is released by the court from punishment or subsequently serving a sentence (Part 1 of Article 81 of the CC RF); should the person regain his health, he may be subject to criminal liability and punishment unless the time-limits set by Articles 78 and 83 of the CC RF has expired.

Compulsory measures of a medical nature may be applied by the court to a person who has committed a crime and suffers from a psychological disorder not excluding criminal capacity but who is in need of treatment for the psychological disorder. In addition to a punishment, the court may appoint for such a person a compulsory measure of a medical nature in the form of out-patient compulsory observation and treatment by a psychiatrist (Part 2 of Article 99 of the CC RF). The relevant decision should be contained in the resolutive part of the verdict.

4. The type of compulsory measure of a medical nature is selected by the court in consideration of the provisions of Part 2 of Article 99 and Articles 100 and 101 of the CC RF. When determining the type of compulsory measure of a medical nature in relation to the persons specified in Provisions “a” and “b”, Part 1 of Article 97 of the CC RF, courts should take account of the nature and degree of the psychological disorder, what danger the person represents for himself and others or the possibility of him causing other material harm. The court should reason its decision on the basis of an expert opinion on the psychological state of the person subject to the proceedings on application of a compulsory measure of a medical nature and of other evidence gathered on the case.

In accordance with Parts 3 and 4 of Article 101 of the CC RF, only people with a psychological state requiring constant observation or constituting a special danger to themselves or others and requiring constant and intensive care should be sent to a psychiatric facility of a specialised type, or a specialised type with intensive care.

5. Jurisdiction over cases on application of compulsory measures of a medical nature is determined according to the general rules governing jurisdiction of criminal cases established by Article 31 of the Criminal Procedure Code of the RF.

By virtue of Article 352 of the Criminal Procedure Code of the RF, such cases are not subject to consideration by a court with a jury.

According to Part 2 of Article 445 of the Criminal Procedure Code of the RF, extension, amendment or termination of the application of a compulsory measure of a medical nature is considered by the court that issued the ruling on its application or by the court where this measure is applied.

6. In accordance with the requirements of Provision 3 of Article 196 of the Criminal Procedure Code of the RF, appointment and performance of judicial forensic psychiatric evaluation is mandatory on every case if the mental condition of the suspect, accused or convicted person needs to be determined, when there is doubt about his criminal capacity or ability to defend his own rights and legitimate interests in the criminal proceedings. Circumstances engendering such doubts may, for example, include information that the person has undergone psychiatric treatment in the past (has been diagnosed by doctors with a psychiatric disorder, has been provided with outpatient psychiatric treatment, been treated in an inpatient psychiatric facility, been recognised as being of unsound mind in another criminal case, unfit for military service owing to his mental health condition and the like), that he is being educated in an institution for persons with retarded or delayed mental development, that he has suffered a head/brain injury in the past, as well as strange actions and statements by the person, testifying to a possible psychological disorder, his own statements about his psychopathological sufferings and experiences

When appointing a forensic psychiatric evaluation, the experts should be asked questions that would clarify the nature and degree of the psychological disorder at the time the socially dangerous act envisaged by criminal law was performed, during the course of the preliminary investigation or consideration of the case by the court, established whether or not the person was, at the given times, aware of the true nature and social danger of his actions (omissions) or able to control them. The experts should also be asked whether the person’s psychological disorder was connected with danger to himself or others or the possibility of him causing other material harm, whether he needs application

of a compulsory measure of a medical nature and which precise measures, and whether, in consideration of the nature and degree of his psychological disorder, the person is capable of exercising his own procedural rights.

7. Questions connected with the mental state of a person subject to proceedings concerning application of a compulsory measure of a medical nature are to be thoroughly analysed and assessed by the court. If the opinion of the expert psychiatrist(s) is not clear or complete enough or if new questions arise in relation to previously investigated circumstances of a criminal case, an additional forensic expert review may be assigned to the same or a different expert(s). In the event doubts arise concerning the justification for the expert opinion or other contradictions in the conclusions of an expert(s) on the same issues, the court may appoint a repeat expert review and charge another expert(s) with conducting it (Part 1 and 2 of Article 207 of the Criminal Procedure Code of the RF).

8. A suspect, accused or person in custody is admitted to a psychiatric facility for expert examination in the manner envisaged by Articles 108 and 203 of the Criminal Procedure Code of the RF, and a person not in custody, – in the manner envisaged by Articles 165 and 203 of the Criminal Procedure Code of the RF.

A court ruling to admit someone to a psychiatric facility or extending time to be spent therein may be appealed by said person, his attorney, legal representative or other persons in the manner envisaged by of the Criminal Procedure Code of the RF.

9. In the course of proceedings, when a forensic psychiatric evaluation establishes that the accused suffered from a temporary psychological disorder precluding any conclusion on his psychological state when committing the socially dangerous act, the case is to be suspended in accordance with Part 3 of Article 253 of the Criminal Procedure Code of the RF. The question of releasing such a person from criminal liability or punishment is not decided in these cases.

10. The person subject to the hearings on application of a compulsory measure of a medical nature should also be granted the right personally to exercise the procedural rights specified by Articles 46 and 47 of the Criminal Procedure Code of the RF if his mental condition allows him to do so. Whereat account is taken of the opinion of experts participating in performing the forensic psychiatric evaluation and, if necessary, a medical opinion provided by a psychiatric facility (Part 1 of Article 437

of the Criminal Procedure Code of the RF). It should be remembered that the given medical documents may not have predetermined force for a court and are subject to assessment in conjunction with the other evidence.

11. In accordance with Part 1 of Article 437 of the Criminal Procedure Code of the RF, the legal representatives of the person subject to the hearings on application of a compulsory measure of a medical nature are recognised as being close relatives, including parents, adoptive parents or other persons specified in Provision 4 of Article 5 of the Criminal Procedure Code of the RF. In the absence of close relative or their refusal to participate in the case, the guardianship and wardship authority may be recognised as a legal representative. Participation by a legal representative is compulsory.

The court is required to provide the legal representative with the opportunity to exercise its procedural rights envisaged by Part 2 of Article 437 of the Criminal Procedure Code of the RF, including the right to participate in the proceedings on a criminal case, enter petitions and challenges, produce evidence, appeal a court decision, receive copies of appealed decisions, know about appeals and submissions entered on a criminal case and file statements of defence thereto, participants in sessions of courts of the appeals, cassation and supervisory instances. In addition, the legal representative must have explained to him his rights to initiate petitions to change or terminate application of a compulsory measure of a medical nature and to participate in their consideration on the basis of Article 445 of the Criminal Procedure Code of the RF.

If necessary, the court may adopt a decision on questioning the legal representative of the subject of the hearings on application of compulsory measures of a medical nature as a witness, with his consent, to which effect it issues a ruling (resolution) and explains to him the rights specified in Part 4 of Article 56 of the Criminal Procedure Code of the RF. During questioning, the legal representative is warned of criminal liability for knowingly bearing false witness.

If the legal representative acts to the detriment of the interests of the person he represents, he is removed by the court from participation in the case, and other persons specified in Provision 4 of Article 5 of the Criminal Procedure Code of the RF or, in their absence, the guardianship and wardship authority are recognised as the legal representative of the subject of the hearings on application of a compulsory measure of a medical nature.

12. By virtue of Provision 3, Part 1 of Article 51 and of Article 438 of the Criminal Procedure Code of the RF, participation of defence counsel is mandatory in proceedings on application of compulsory measures of a medical nature from the time a ruling is issued to appoint a forensic psychiatric evaluation of the person, if no defence counsel participated in the given criminal case previously. The court may not accept refusal of defence counsel in such cases. In the event of violations of the given requirements during the preliminary investigation, the criminal case is returned to the public prosecutor in the manner established by Article 237 of the Criminal Procedure Code of the RF.

13. Proceeding from the provisions of Article 440 of the Criminal Procedure Code of the RF, having received a criminal case on application of a compulsory measure of a medical nature and given absence of grounds for referring it to the court of the relevant jurisdiction and for scheduling preliminary hearings, issues a ruling on scheduling a court hearing to resolve the matters specified in Part 2 of Article 231 of the Criminal Procedure Code of the RF.

The subject of the proceedings on application of a compulsory measure of a medical nature should be informed of the time, date and place of the court hearings in order for him to exercise his right to enter petitions (to acquaint himself personally with the criminal case files, to participate personally in the court hearings and so on) or exercise other rights guaranteed by criminal procedural law.

14. In accordance with Provision 5, Part 2 of Article 231 of the Criminal Procedure Code of the RF, in a ruling on scheduling a court session, the judge may take a decision to hear the criminal case in camera in consideration of the provisions of Article 241 of the Criminal Procedure Code of the RF, including if hearing the criminal case in court might result in dissemination of medical secrets protected by federal law.

15. If the persons specified in Part 6 of Article 439 of the Criminal Procedure Code of the RF were not provided with a copy of the ruling on referring the criminal case to court for application of a compulsory measure of a medical nature, the judge schedules a preliminary hearing to decide on whether to return the criminal case to the public prosecutor in the manner established by Article 237 of the Criminal Procedure Code of the RF.

16. Proceeding from the provisions of Part 1 of Article 437 of the Criminal Procedure Code of the RF, the subject of the proceedings on application of a compulsory measure of a medical nature should,

when participating in a court session, have explained to him his procedural rights provided for by Articles 46 and 47 of the Criminal Procedure Code of the RF and be provided with an opportunity to exercise these rights.

Evidence given by such a person may be taken into consideration by the court in evaluating his mental state and the danger he poses for himself or others or the possibility of him causing other material harm, for determining the type of compulsory measure of a medical nature.

17. During the court session, the court should, in the manner established by law, verify whether it has been proven that the action prohibited by criminal law was performed by this specific person, establish the circumstances testifying that he poses a danger to himself or others or might cause other material harm owing to his psychological disorder, as well as other circumstances to be proved in accordance with Part 2 of Article 434 of the Criminal Procedure Code of the RF.

The fact that the person poses a danger to himself or others or might cause other material harm may be evidenced by the nature of the psychological disorder, confirmed by the conclusions of a forensic psychiatric evaluation, his propensity in this connection to perform acts of violence towards other persons or to cause harm to himself, to perform other socially dangerous actions (seize property of others, commit arson, destroy or damage property by other means and so on), as well as by the given person's physical condition, providing the basis for assessing the possibility of implementing his social dangerous intentions.

Should the court conclude that persons specified in Part 1 of Article 97 of the CC RF do not pose any danger as a result of their mental state, it may transfer the requisite materials to healthcare institutions to decide on treating such people or admitting them to a social welfare psycho-neurological institution in the manner envisaged by the healthcare legislation of the Russian Federation (Part 4 of Article 97 of the CC RF).

18. If, during the proceedings on a case involving an indictment, it is established that, when committing the relevant act, the accused was in a state of criminal incapacity or, after committing the crime, suffered from a psychological disorder preventing him from realising the true nature and social danger of his actions (omissions) or to control them, the court issues a ruling in the manner envisaged by Chapter 51 of the Criminal Procedure Code of the RF, without remanding the case to the public

prosecutor. When such circumstances are established in a case involving a bill of indictment, such a case is to be remanded to the public prosecutor in accordance with Article 237 of the Criminal Procedure Code of the RF, since, in consideration of the provisions of Part 1 of Article 434 of the Criminal Procedure Code of the RF, preliminary investigation is mandatory for cases of the given category.

19. Should a socially dangerous act envisaged by criminal law be committed by several persons, the court is entitled, at one and the same time, to consider the question of the guilt of some persons and issue a ruling on application of compulsory measures of a medical nature in relation to others who committed this act in a state of criminal incapacity or persons who, after committing the crime, suffered from a psychological disorder preventing them from realising the true nature and social danger of his actions (omissions) or to control them.

20. By virtue of Part 1 of Article 443 of the Criminal Procedure Code of the RF, it is recognised as proven that the act prohibited by criminal law was performed by someone in a state of criminal incapacity or that, after committing the crime, he suffered from a psychological disorder precluding handing down a punishment, in accordance with Articles 21 and 81 of the CC RF, the court issues a ruling on releasing from criminal liability and applying compulsory measures of a medical nature. Whereat the descriptive part of the ruling should set out the circumstances of the crime established by the court on the basis of the evidence studied; provide a legal assessment of the given person's actions and the reasoning behind the decision taken. The resolutive part of the ruling should specify that the accused is released from criminal liability or punishment and that a specific compulsory measure of a medical nature is to be applied, and should provide the decision on cancelling a measure of restraint, unless this was cancelled previously. The matter of material evidence should also be resolved.

In the ruling, the court specified the type of compulsory measure of a medical nature in accordance with Part 1 of Article 99 of the CC RF. The specific psychiatric institution where the treatment should be provided is decided by the healthcare authorities.

21. Proceeding from the provisions of Parts 2 and 3 of Article 443 of the Criminal Procedure Code of the RF, the court issues a ruling on termination of a criminal case:

if the person does not pose a danger in terms of his mental state or the act committed thereby was not a serious one. Whereat the court also rejects application of a compulsory measure of a medical nature;

given the grounds envisaged by Articles 24–28 of the Criminal Procedure Code of the RF, irrespective of whether the person suffers from a disorder and of the nature thereof.

If a criminal case is terminated, a copy of the court ruling is sent within 5 days to the healthcare authority to decide on treatment or admission of a person in need of psychiatric help to a psychiatric facility (Part 4 of Article 443 of the Criminal Procedure Code of the RF).

22. A civil claim filed under a criminal case on application of compulsory measures of a medical nature is not subject to consideration, though this does not impeded its subsequent filing and consideration in the manner of civil administration of justice, on which the court takes a relevant decision.

By virtue of Article 132 of the Criminal Procedure Code of the RF, persons subject to compulsory measures of a medical nature are not charged procedural costs, including advocate's fees for legal aid, these being covered out of the federal budget.

23. If a convicted person who is serving a sentence has become subject to a psychological disorder precluding him from serving his sentence further, he is released therefrom and compulsory measures of a medical nature may be applied to him (Part 1 of Article 81 of the CC RF).

In accordance with Part 5 of Article 175 of the Correctional Code RF, such a convicted person or his legal representative is entitled to petition the court for release from further punishment, such a petition being submitted via the correctional administration or authority. If the convicted person himself or his legal representative is unable to petition the court personally for the former's release from further punishment due to onset of a psychological disorder, his submission is filed with the court by the head of the correctional institution or authority. The given petition or submission is sent to the court together with the opinion of the medical commission and the prisoner's case file. The given issue is considered and decided as established by Article 399 of the Criminal Procedure Code of the RF and in consideration of guarantees of the right of the subject of the proceedings on application of compulsory measures of a medical nature envisaged by Chapter 51 of the Criminal Procedure Code of the RF.

24. A court ruling issued on the results of consideration of a case but not yet in legal effect may be appealed through the appeals or cassation courts by the subject of the proceedings on application of a compulsory measure of a medical nature, his defence counsel, legal representative, victim or his representative or a public prosecutor, as well as other persons in as far as the appealed court ruling affects their rights and legitimate interests.

By virtue of Part 3 of Article 376 of the Criminal Procedure Code of the RF, the subject of proceedings on application of a compulsory measure of a medical nature is entitled to participate in a session of a cassation court directly or to set forth his position using the video-conferencing system, provided he announces his wish to attend during consideration of the appeal or submission with respect to the court ruling. The form of his participation in the court session is decided by the court. Such a person may attend if his mental condition allows him to participate personally in the court session. Whereat account is taken of the opinion of the experts that participated in performing the forensic psychiatric evaluation and, if necessary, the medial opinion of the psychiatric facility.

25. A superior court is entitled, if there are relevant grounds, to change the type of compulsory measure of a medical nature appointed by the court to a less strict one, provided this does not violate the right to protection of the person under a compulsory measure of a medical nature, or, on the basis of a cassation appeal by the victim or a cassation submission, to reverse the decision of the court of the first (appeals) instance and remand the case for review by the same court with different judges, if there are grounds for application of a stricter compulsory measure of a medical nature.

If the court fails to provide the subject of the current or previous proceedings on application of a compulsory measure of a medical nature with the right to participate personally in the court session, if his mental condition allows him to do so and to exercise his procedural rights, this violates the requirements of Part 1 of Article 437 and Part 1 of Article 441 of the Criminal Procedure Code of the RF and entails reversal of the existing court ruling.

26. The court should remember that, by virtue of Part 2 of Article 102 of the CC RF, a person to which a compulsory measure of a medical nature is applied is subject to evaluation by a commission of psychiatric physicians at least every six months for a decision to be made as to whether there are grounds for making a submission to the court for terminating or changing the given measure.

Whereat, in accordance with Part 1 of Article 445 of the Criminal Procedure Code of the RF, on the basis of a petition from the administration of the psychiatric facility (institution) confirmed by a medical opinion or a petition from the person subject to the compulsory measure of a medical nature, his defence counsel or legal representative, the court terminates, changes or extends for the following six month application to the given person of the compulsory measure of a medical nature, this being specified in a court ruling.

27. When considering extending, changing or terminating application of a compulsory measure of a medical nature, the court should thoroughly verify the justification for the filed petition in accordance with Part 1 of Article 445 of the Criminal Procedure Code of the RF. For this purpose, the court should clarify the results of the treatment carried out and decide whether further medical observation or treatment is required. To this end, a representative of the medical institution (psychiatric facility) observing the person in relation to whom extension, change or termination of a compulsory measure of a medical nature is being decided may be summoned to attend the court session. It is mandatory for the court session to be attended by the defence counsel or legal representative of the subject of the proceedings on application of a compulsory measure of a medical nature, and by the public prosecutor.

In accordance with Part 2 of Article 399 and Part 4 of Article 445 of the Criminal Procedure Code of the RF, the person in relation to whom extension, change or termination of a compulsory measure of a medical nature is being decided should attend the court session himself or be provided with an opportunity to set forth his positions by video-conferencing system, provided, in accordance with a medical opinion, his mental condition permits him to do so. The form of his participation in the court session is decided by the court.

If the mental condition of the person in relation to whom extension, change or termination of a compulsory measure of a medical nature is being decided does not permit him to participate personally in a court session held on court premises, it is recommended that courts consider the relevant materials at the psychiatric facility.

If the medical opinion raises doubts, on the basis of a petition from the participants in the court session or on its own initiative, the court may appoint a judicial examination, demand additional documents and question the person in relation to whom extension, change or termination of a compulsory

measure of a medical nature is being decided, if his mental state permits this (Part 5 of Article 445 of the Criminal Procedure Code of the RF).

28. The court terminates or changes a compulsory measure of a medical nature if the person's mental state obviates the need for the previously prescribed measure or the need arises to apply another compulsory measure of a medical nature. The court prolongs compulsory treatment if there are grounds for extending application of the compulsory measure of a medical nature (Part 6 of Article 445 of the Criminal Procedure Code of the RF).

29. If there has been a change in the psychological state of a person prescribed a compulsory measure of a medical nature in the form of out-patient compulsory observation and treatment by a psychiatrist and a need has arisen for him to be admitted to a psychiatric facility for compulsory treatment, the court is entitled to change the form of compulsory measure of a medical nature in accordance with Part 1 of Article 99 of the CC RF, when details are available that the nature of the patient's psychological disorder requires such conditions for treatment, care, support and observation as can only be provided by a psychiatric facility. The ruling should specify the circumstances testifying to a change in the mental condition of the patient since being prescribed the compulsory measure of a medical nature and the greater danger he now poses to himself and others. The decision is taken as stipulated by Article 445 of the Criminal Procedure Code of the RF.

30. Proceeding from the provisions of Part 4 of Article 102 of the CC RF, if compulsory treatment in a psychiatric facility is terminated, the court may hand over the requisite materials on the person undergoing compulsory treatment to the healthcare authority to decide on his treatment or admission to a social welfare psycho-neurological institution as envisaged by the healthcare legislation of the Russian Federation.

31. Should a person in whom the onset of his psychological disorder followed the time when he committed his crime and to whom a compulsory measure of a medical nature was applied be recognised as having recovered, the court that heard the criminal case on application of compulsory measures of a medical nature issues, on the basis of a medical opinion and in accordance with Provision 12 of Article 397 and Part 3 of Article 396 of the Criminal Procedure Code of the RF, a ruling terminating application to the given person of the compulsory measure of a medical nature and

decides on sending the criminal case to the head of investigation agency or head of the inquiry body for preliminary investigation in the general manner. The time spent in the psychiatric facility is counted towards the sentence term in accordance with Article 103 of the CC RF.

32. The attention of the courts should be drawn to the fact that a convicted person to whom a compulsory measure of a medical nature has been applied in accordance with Part 2 of Article 99 of the CC RF and whose mental state has changed in a way requiring inpatient treatment, in accordance with Part 2 of Article 104 of the CC RF, is admitted to a psychiatric facility or other treatment institution in the manner and on the grounds specified by the healthcare legislation of the Russian Federation.

33. A court decision that has come into legal force prescribing, changing or terminating a compulsory measure of a medical nature may be reconsidered in the manner established by law.

34. To recommend that, if courts identify circumstances furthering performance of a socially dangerous act, violation of rights and freedoms of the subjects of proceedings on application of a compulsory measure of a medical nature, they should issue partial rulings (resolutions) drawing the attention of the relevant organisations or officials to the given circumstances and facts of violations of the law requiring adoption of requisite measures (Part 4 of Article 29 of the Criminal Procedure Code of the RF).

35. In connection with adoption of this ruling, to recognise ruling of the Plenary Session of the Supreme Court of the USSR of 26 April 1984 No. 4 “On Judicial Practice on Applying, Changing and Terminating Compulsory Measures of a Medical Nature” as vitiated on the territory of the Russian Federation.

Ruling of the Plenary Session of the Supreme Court of the Russian Federation of 28 June 2011 No. 11 Moscow "On Court Practice on Criminal Cases on Crimes of an Extremist Nature"

The Constitution of the Russian Federation proclaims that the person, his rights and freedoms are the supreme value and their recognition, observance and protection is the duty of the state (Article 2) and establishes that human and civil rights and freedoms may be limited by federal law only commensurately with constitutionally significant objectives (Article 55).

In the Russian Federation, ideological and political diversity and a multi-party system are recognised; no ideology may be established as being that of the state or mandatory. Parties and activities of public associations may not be formed for the purpose of goals or actions designed to change the principles of the constitutional system by violence or to violate the integrity of the Russian Federation, undermine state security, set up armed units or foment social, racial, national or religious discord (Article 13 of the Constitution of the Russian Federation).

According to the Constitution of the Russian Federation, the state guarantees equality of human and civil rights and freedoms irrespective of gender, race, nationality, language, origins, material or official status, place of residence, confession, convictions, membership of public associations, as well as other circumstances; any forms of limitations on the rights of citizens in relation to their social, racial, national, linguistic or religious affiliation are prohibited (Article 19).

The Constitution of the Russian Federation, while guaranteeing freedom of thought and of speech, prohibits propaganda and agitation fomenting social, racial, national or religious hatred and enmity or propaganda of social, racial, national, religious or linguistic superiority (Article 29).

International legal standards in the sphere of human rights proclaim everyone's right to freedom of expression, yet at the same time envisage that any declaration or action in favour of national, racial or religious hatred, constituting incitement to discrimination, enmity or violence; any dissemination of ideas based on racial supremacy or hatred, any incitement to racial discrimination, as well as all acts of violence or incitement to such acts directed against any race or group of persons of a different skin colour or ethnic origin, provision of any assistance in conducting racist activities, including their financing; any discrimination on the basis religion or confession should be prohibited by law (the Universal Declaration of Human Rights of 10 December 1948, the International Covenant on Civil and

Political Rights of 16 December 1966, International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, UN General Assembly Declaration of 25 November 1981 on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950).

The Shanghai Convention on Combating Terrorism, Separatism and Extremism of 15 June 2001 states that terrorism, separatism and extremism, irrespective of their motives, may not be justified under any circumstances and persons guilty of performing such actions should be held liable in accordance with law.

In the interests of implementing the given constitutional prohibitions and fulfilling the Russian Federation's international obligations, its Criminal Code stipulates liability for committing crimes of extremism.

For the purposes of ensuring unified court practice on criminal cases relating to crimes of extremism, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation,

resolves:

1. When considering criminal cases on crimes of extremism, courts should ensure, on the one hand, protection of public interests (the foundations of the constitutional system, integrity and security of the Russian Federation) and, on the other – protection of human and civil rights and freedom of conscience and confession, freedom of thought, of speech, of the media, the right freely to seek, receive, transmit, produce and distribute information by any lawful means, the right to peaceful assembly, without weapons, to hold gatherings, meetings and demonstrations, processions and pickets, as guaranteed by the Constitution of the Russian Federation.

2. Proceeding from the provisions of comment 2 to Article 282 [1] of the CC RF, crimes of extremism include those motivated by political, ideological, racial, national or religious hatred or enmity or by hatred or enmity in relation to some social group, as specified by the relevant articles of the Special part of the Criminal Code of the Russian Federation (for example, by Articles 280, 282, 282 [1] and

282 [2] of the CC RF, Provision “l”, Part 2 of Article 105, Provision “e”, Part 2 of Article 111, Provision “b”, Part 1 of Article 213 of the CC RF), as well as other crimes committed for the given motives and that, in accordance with Provision “e”, Part 1 of Article 63 of the CC RF, are recognised as aggravating circumstance.

3. During proceedings on criminal cases relating to crimes of extremism, courts should bear in mind that, in accordance with Provision 2, Part 1 of Article 73 of the Criminal Procedure Code of the RF, the motives behind such crimes must be proven.

Classification of crimes against life and health motivated by political, ideological, racial, national or religious hatred or enmity or by hatred or enmity in relation to some social group under Provision “l”, Part 2 of Article 105, or Provision “e”, Part 2 of Article 111, or Provision “e”, Part 2 of Article 112, or Provision “b”, Part 2 of Article 115, or Provision “b”, Part 2 of Article 116 of the CC RF precludes their simultaneous classification under other Provisions of the given parts of these articles envisaging a different motive for or goal of the crime (for example, rowdiness).

Crimes motivated by political, ideological, racial, national or religious hatred or enmity or by hatred or enmity in relation to some social group should be distinguished from crimes committed on the basis of personal antipathy. In order to establish correctly the motive behind a crime, account should be taken, in particular, of how long the relations between the perpetrator and the victim have existed, whether there are related conflicts not connected with national, religious, ideological or political views, race or social group.

4. Public calls (Article 280 of the CC RF) should be understood as appeals to other people, expressed in any form (verbal, written, created via technical means, public information and telecommunications networks, including the Internet), inciting them to perform extremist acts.

When establishing what ‘calls’ are, account should be taken of the provisions of Federal Law dated 25 July 2002 No. 114-FZ “On Combating Extremism”.

The question as to whether calls are public should be decided by courts in consideration of the place, means, situation and other circumstances of the case (appeals to a group of people in public places, at gatherings, meeting or demonstrations, distribution of leaflets, hanging of posters, placement of

appeals on public information and telecommunications networks, including the Internet, for example on sites, in blogs or on fora, distribution of appeals by fan-out mail of electronic announcements and the like).

The crime is deemed to have been completed from the time of public proclamation (circulation) of at least one appeal, irrespective of whether or not it was successful in inciting others to perform acts of extremism.

5. To draw the attention of courts to the fact that Article 280 of the CC RF stipulates liability only for public calls to extremism. Public distribution of information substantiating the need to perform unlawful actions in relation to persons by reason of race, nationality, religion, etc. or information justifying such activities should be classed under Article 282 of the CC RF, given other indicia of this crime.

Public calls to perform acts of terrorism are, by virtue of the prescriptions of Part 3 of Article 17 of the CC RF, to be classed not under Article 280 of the CC RF but, depending on the circumstances of the case, under Part 1 or Part 2 of Article 205 [2] of the CC RF.

6. When deciding the question relating to use of the media (Part 2 of Article 280 and Article 282 of the CC RF), courts should take into account the provisions of the Law of the Russian Federation of 27 December 1991 No. 2124-I "On the Media" (as subsequently amended).

7. Actions intended to incite hatred or enmity or to denigrate the dignity of an individual or group on the basis of gender, race, nationality, language, origins, attitude to religion or belonging to some social group entail criminal liability under Part 1 of Article 282 of the CC RF only if they are performed publicly or using the media (for example, speeches at gatherings or meetings, distribution of leaflets or posters, placement of relevant information in magazines, brochures or books, on public information and telecommunications networks, including the Internet, and other such actions, including ones intended for subsequent acquaintance of other persons with the information).

Actions intended to incite hatred or enmity should be understood, in particular, as statements justifying and (or) asserting the need for genocide, mass repression, deportation, performance of other unlawful actions, including of use of force, in relation to representatives of any nation or race, adherents to any

religion and other groups of people. Criticism of political organisations, ideological and religious associations, political, ideological or religious convictions, national or religious customs should not in itself be considered as an action intended to incite hatred or enmity.

When establishing actions in relation to officials (professional politicians) as being intended to denigrate the dignity of an individual or group of persons, courts should take into account the provisions of Articles 3 and 4 of the Declaration of Freedom of Political Debate in the Media, adopted by the Committee of Ministers of the Council of Europe on 12 February 2004, and the practice of the European Court of Human Rights, in accordance with which politicians seek to get public opinion on their side thus agree to become the subject of public political discussion and criticism in the media; state officials may be criticised in the media for how they fulfil their duties, since this is necessary to ensure openness and responsible exercise of their powers. Criticism in the media of officials (professional politicians), their actions and convictions should not in itself always be considered as an action intended to denigrate the dignity of an individual or groups of people, since the bounds of permissible criticism are broader with respect to such people than to private individuals.

The crime envisaged by Part 1 of Article 282 of the CC RF is considered completed from the time when at least one action is performed with the intention of inciting hatred or enmity or denigrating the dignity of an individual or groups of people with respect to a specific gender, race, nationality or language, origins, attitude to religion, or social group.

8. The crime set out in Article 282 of the CC RF is committed only with direct intent and for the purpose of inciting hatred or enmity or denigrating the dignity of an individual or groups of people with respect to a specific gender, race, nationality or language, origins, attitude to religion, or social group.

The question as to whether mass distribution of extremist materials included on the published federal list of extremist materials constitutes a crime specified by Article 282 of the CC RF or an administrative offence (Article 20.29 of the Code of Administrative Offences of the Russian Federation) should be decided depending on the intent pursued by the distributor of the given materials.

If someone distributes extremist materials included on the published federal list of extremist materials for the purpose of inciting hatred or enmity or denigrating the dignity of an individual or groups of people with respect to a specific gender, race, nationality or language, origins, attitude to religion, or social group, this should entail criminal liability under Article 282 of the CC RF.

It is not a crime specified under Article 282 of the CC RF to express opinions and conclusions using facts of inter-ethnic, inter-confessional or other social relations in scientific or political discussions and texts that do not pursue the goal of inciting hatred or enmity or denigrating the dignity of an individual or groups of people with respect to a specific gender, race, nationality or language, origins, attitude to religion, or social group.

9. In contrast to the violent crimes against life and health motivated by political, ideological, racial, national or religious hatred or enmity, or by hatred or enmity in relation to some social group envisaged by Chapter 16 of the Criminal Code of the Russian Federation (Provision “l”, Part 2 of Article 105, Provision “e”, Part 2 of Article 111, Provision “e”, Part 2 of Article 112, Provision “b”, Part 2 of Article 115, Provision “b”, Part 2 of Article 116, Provision “z”, Part 2 of Article 117 of the CC RF), use of violence in committing a crime covered by Article 282 of the CC RF is not just an expression of hatred towards a specific victim but is also intended to achieve a special goal – to incite hatred or enmity in other people (which may be evidenced, for example, by use of force in public places, in the presence of bystanders, in relation to the victim(s) because he belongs to a specific race or nationality, accompanied by racist or nationalistic statements).

10. Persons who use their official position include, in particular, officials bearing the features specified by comment 1 to Article 285 of the CC RF, civil or municipal servants who are not officials, as well as other persons meeting the requirements specified by comment 1 to Article 201 of the CC RF.

Use of official position (Provision “b”, Part 2 of Article 282 and Part 3 of Article 282 [1] of the CC RF) is manifested not only in deliberate use by the above-mentioned persons of their official powers but also in exerting an influence on others, proceeding from the importance and authority of their position, to perform actions intended, in particular, to incite hatred or enmity or denigrate the dignity of an individual or groups of people with respect to a specific gender, race, nationality or language, origins, attitude to religion, or social group.

11. In cases of vandalism, destruction of or damage to historical and cultural monuments, desecration of corpses or their graves motivated by political, ideological, racial, national or religious hatred or enmity, or by hatred or enmity in relation to some social group, these are classed under Article 214, 243 or 244 of the CC RF, respectively. If such actions are accompanied by ones covered by Article 282 of the CC RF (for example, if graffiti of corresponding content is made on monuments or nationalist slogans are chanted in the presence of bystanders), this is classed under the aggregate of crimes envisaged by Article 214, 243 or 244 of the CC RF and Article 282 of the CC RF, respectively.

12. An extremist group (Article 282 [1] of the CC RF) should be understood as a stable group of persons, united in advance, for preparing or committing one or several crimes of extremism. These groups are characterised by having an organiser (leader), a stable membership and its participants acting in concert for the purposes of implementing their common criminal intent. The extremist group may also be made up of structural subdivisions (sections).

For an organised group to be recognised as extremist, no prior judicial decision is required prohibiting or liquidating the public or religious association or other organisation in connection with extremist actions.

A structural subdivision (section) of an extremist group is a functionally and (or) territorially separate group of two or more persons (including the leader of this group) that carries out criminal activities within the scope of and in accordance with the goals of an extremist group. Such structural subdivisions (sections) may not only commit individual extremist crimes but also fulfil other tasks to provide for the functioning of the extremist group (for example, by furnishing it with weapons and other items used as weapons, producing leaflets, literature and other materials of an extremist nature).

An association of organisers, leaders or other representatives of sections or structural subdivisions of an extremist group is created for the purpose of drawing up plans and (or) creating the conditions for committing crimes of extremism.

13. To clarify to courts that criminal liability under Article 282 [1] of the CC RF for the forming of an extremist group, leading it (its section or structural subdivision) or for participating therein arises when organisers, leaders and participants of this group share the intention to prepare and commit extremist

crimes and recognise the common purposes of the functioning of such a group and their membership therein.

14. Criminal liability for forming an extremist group (Part 1 of Article 282 [1] of the CC RF) arises from the time when the given group is actually formed, i.e., when several people join together for the purposes of preparing and committing crimes of extremism and performing deliberate actions intended to create conditions for committing crimes of extremism or testifying to the readiness of the extremist group to realise its criminal intent, irrespective of whether the participants in the given group have committed the planned extremist crime. Readiness of an extremist group to commit the given crimes may be evidence, for example, by them achieving agreement to use force in public places against persons by virtue of them belonging (or not belonging) to a specific gender, race, nationality, linguistic or social group, of their origins or attitude to religion.

Under Part 1 of Article 282 [1] of the CC RF, actions resulting in formation of stable ties between the given persons for the purposes of joint development of plans and (or) creation of the conditions for committing crimes of extremism is classed as establishment of an association of organisers, leaders or other representatives of sections or structural subdivisions of an extremist group.

15. Under Article 282 [1] of the CC RF, leadership of an extremist group, section or structural subdivision thereof should be understood as fulfilment of management functions in relation to the extremist group, its section or structural subdivisions, as well as individual participants therein when specific crimes of extremism are committed and as provision for the activities of an extremist group.

Such leadership may be manifested, in particular, in development of common action plans for an extremist group, preparation for committing specific crimes of extremism, performance of other actions intended to achieve the purposes set for the extremist group or its structural subdivisions from their inception (for example, in distribution of roles among the members of the group, organisation of material and technical supplies, development of means for committing crimes and taking of security measures in relation to the members of an extremist group).

16. Participation in an extremist group (Part 2 of Article 282 [1] of the CC RF) should be understood as belonging to the given group or participating in preparation for committing one of several crimes of extremism and (or) actually committing such crimes, as well as performance of functional obligations

to support the activities of such a group (financing, supply of information, keeping documents and the like).

A crime in the form of participation in an extremist group is deemed completed from the time preparations are launched for committing an extremist crime or at least one such crime is committed or other specific actions are performed to support the activities of an extremist group.

17. When a participant in an extremist group commits a specific crime, his actions should be classed according to the aggregate of crimes envisaged by Part 2 of Article 282 [1] of the CC RF and the relevant part (Provision) of the article of the Criminal Code of the Russian Federation, in consideration of the determining feature "by an organised group". If the indicia of the crime committed do not provide for the determining feature of being committed by an organised group, the perpetrator's actions are to be classed under Part 2 of Article 282 [1] of the CC RF and the relevant part (Provision) of the article of the Criminal Code of the Russian Federation providing for the determining feature "by a group by collusion" and in its absence, that of "by a group of persons".

If the body of the crime committed does not envisage as a determining feature it being committed by an organised group, by a group by collusion or by a group of persons, the relevant actions should be classed under Part 2 of Article 282 [1] of the CC RF and the relevant article of the Criminal Code of the Russian Federation. Whereat, in accordance with Provision "v", Part 1 of Article 63 of the CC RF, if participants in an extremist group commit a specific crime as part of an organised group, this is recognised as an aggravating circumstance.

18. The subjects of the crimes envisaged by Article 282 [1] of the CC RF must have reached the age of sixteen. 14 to 16-year-olds who commit specific crimes together with the members of an extremist group are subject to criminal liability only for those crimes for which liability is envisaged by law from the age of fourteen (Article 20 of the CC RF).

19. In accordance with Article 1 of the Federal Law "On Combating Extremism", terrorist activities constitute a variety of extremist activity (extremism). In consideration of this, when cases involving the crimes envisaged by Article 282 [2] of the CC RF are under consideration, organisations specified on special lists in accordance with Article 9 of the Federal Law "On Combating Extremism" and Article 24 of Federal Law dated 6 March 2006 No. 35-FZ "On Combating Terrorism" should be

included among public and religious associations or other organisations in relation to which the court has adopted a legally effective decision on liquidation or prohibition of the activities in connection with extremism.

To draw the attention of the courts to the fact that, in accordance with directives of the Government of the Russian Federation of 15 October 2007 No. 1420-p and of 14 July 2006 No. 1014-p, such lists are subject to official publication in "Rossiyskaya Gazeta".

20. Organisation of the activities of a public or religious association or other organisation, in relation to which the court has adopted a legally effective decision on liquidation or prohibition of the activities in connection with extremism (Part 1 of Article 282 [2] of the CC RF) should be understood as actions of an organisational nature intended to continue or renew the unlawful activities of a banned organisation (for example, convening meetings, organising of recruiting new members and marches, or using bank accounts, unless this is associated with the winding up procedure).

Participation in the activities of an extremist organisation (Part 2 of Article 282 [2] of the CC RF) is understood as performance of deliberate actions to achieve the purposes of the extremist organisation (holding discussions to propagandise the activities of the banned organisation, recruiting new participants, participating directly in events and the like).

If an organiser (leader) or participant in an extremist organisation commits a specific crime, his actions are to be classed according to the aggregate of crimes envisaged by Part 1 or Part 2 of Article 282 [2] of the CC RF and the relevant article of the Criminal Code of the Russian Federation.

21. When deciding on distinguishing between the crimes envisaged by Article 282 [2] of the CC RF and an administrative offence envisaged by Article 20.28 of the Code of Administrative Offences of the RF, account should be taken of the fact that organisation of and participation in the activities of a public or religious association, in relation to which an effective decision has been issued to suspend its activities entails administrative liability. Whereas performance of the given actions when a decision on liquidation or prohibition of the activities of a public or religious association in connection with extremism is in legal effect entails criminal liability.

22. In accordance with the comment to Article 282 [2] of the CC RF, a person who voluntarily ceases to participate in the activities of a public or religious association or other organisation in relation to which a court has adopted a legally effective decision on liquidation or prohibition of the activities in connection with extremism is released from criminal liability, unless his actions contain other indicia of a crime.

Voluntary termination of participation in the activities of an extremist organisation is understood, with respect to the given comment, as termination by the individual of criminal activities while recognising the possibility of their continuation. This may be manifested, for example, in withdrawal from an extremist organisation, non-fulfilment of the instructions of its leaders, refusal to perform other actions supporting the organisation or to commit a crime.

23. When necessary, for the purpose of determining the goals of informative materials, linguistic experts may be appointed to review the relevant materials. In addition to linguists, specialists in relevant fields (psychology, history, religious studies, anthropology, philosophy, politics and so on) may be engaged to perform such an expert review. In this case, a comprehensive expert review is carried out.

If expert testimony is utilised in cases relating to crimes of extremism, the experts may not be asked legal questions going beyond the scope of their expertise and connected with evaluating an action which falls within the exclusive competence of the court. In particular, the experts may not be asked whether the text includes calls to extremism or whether the informative materials are intended to incite hatred or enmity.

Proceeding from the provisions of Article 198 of the Criminal Procedure Code of the RF, when considering criminal cases on crimes of extremism, courts should provide the accused with the opportunity to acquaint himself with the ruling appointing a forensic expert review, irrespective of its types, and with the expert opinion based thereon or with a statement that it is not possible to give an opinion. The accused should also be given the opportunity to challenge the expert or petition for an expert review to be conducted by a different expert institution, for the person named thereby to be engaged as any expert or for the review to be conducted in a specific expert institution, and for the ruling (resolution) on appointing such a review to include additional questions for the expert.

By virtue of the provisions of Part 4 of Article 271 of the Criminal Procedure Code of the RF, when considering criminal cases on crimes of extremism, the court is not entitled to dismiss a petition for questioning, during the court session, of a specialist attending the court session on the initiative of any side. Whereat the court should verify whether the given person is in possession of special knowledge on the matters constituting the subject of the proceedings.

The court is entitled, in accordance with Part 1 of Article 69, Provision 3 Part 2 of Article 70, Part 2 of Article 71 of the Criminal Procedure Code of the RF, to issue a decision rejecting the specialist if documents are not produced testifying to special knowledge on the part of the person for which a petition was filed to allow questioning, such documents are recognised as insufficient or the incompetence of the witness is established during the questioning.

24. Courts should ensure individual punishment for those found guilty of committing crimes of extremism. When handing down a sentence to someone who was a minor when the given crime was committed, in accordance with Part 1 of Article 89 of the CC RF, the court should clarify and take into consideration the perpetrator's living conditions and upbringing, level of mental development and other personal specifics, including the influence exerted on him by older people.

25. In relation to those found guilty of committing crimes envisaged by Articles 282 [1] and 282 [2] of the CC RF, in accordance with Provisions "a", "b" and "v" Part 1 of Article 104 [1] of the CC RF, the court must decide the question of confiscating money, valuables and other property received as a result of the given crimes and any incomes from this property; money, valuables and other property into which this property and income was partially or fully converted or transformed; money, valuables and other property used or intended for the financing of an organised group.

Proceeding from the provisions of Provision "g", Part 1 of Article 104 [1] of the CC RF and Part 3 of Article 81 of the Criminal Procedure Code of the RF, the court may decide to confiscate weapons, equipment or other tools for committing crimes belonging to the accused.

26. To recommend that, when considering criminal cases relating to crimes of extremism, in accordance with Part 4 of Article 29 of the Criminal Procedure Code of the RF, courts identify the circumstances that facilitated the given crimes and issue partial rulings (resolutions) drawing the attention of the relevant organisations and officials thereto.

Ruling of the Plenary Session of the Supreme Court of the Russian Federation of 14 June 2012 No. 11 Moscow "On Consideration by Courts of Matters Connected with Extradition for Criminal Prosecution or Execution of a Sentence, as well as Handing Over to Serve a Sentence"

Extradition of those accused of crimes or convicted by a court of a foreign state, for criminal prosecution or execution of the sentence, as well as the handing over of persons sentenced to deprivation of freedom to serve their sentence in the state of which they are citizens are vital forms of international cooperation in the sphere of criminal justice, ensuring the unavoidability of criminal prosecution and punishment and social rehabilitation of criminals.

Special significance is acquired by the institutions of extradition and rendition of person under the conditions of globalisation, integration and population migration, as well as the rise in cross-border crime. As a consequence, the number of international treaties of the Russian Federation for the given purposes is also going up.

Proceeding from the provisions of Articles 15, 17 and 18 of the Constitution of the Russian Federation, when cooperating internationally in the sphere of criminal justice, the Russian Federation is required to observe the human rights and freedoms guaranteed by its legislation, the generally recognised principles and rules of international law, as well as international treaties of the Russian Federation.

For the purposes of ensuring unified judicial practice with respect to application of the legislation of the Russian Federation, the generally accepted principles and rules of international law and international treaties of the Russian Federation regulating extradition to a foreign state for criminal prosecution or execution of a sentence, as well as handing over of persons sentenced to deprivation of freedom to serve their sentence in the state of which they are citizens, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, by Articles 9 and 14 of the Federal Constitutional Law "On Courts of General Jurisdiction in the Russian Federation",

resolves:

1. To draw the attention of courts to the fact that the Russian Federation may extradite a foreign citizen or stateless persons located on its territory for criminal prosecution or execution of the sentence, hand over a person convicted by a court of the Russian Federation to deprivation of freedom to serve his sentence in the state of which he is a citizen and recognise a sentence handed down by a court of a foreign state convicting a citizen of the Russian Federation handed over to the Russian Federation to serve his sentence on the basis of an international treaty of the Russian Federation or the principle of reciprocity (Part 2 of Article 63 of the Constitution of the Russian Federation, Part 1 of Article 13 of the CC RF, Part 1 of Article 462, of Article 469 and 472 of the Criminal Procedure Code of the RF).

2. Extradition or handing over of someone to a foreign state and recognition of a sentence handed down by a court of a foreign state are provided for in bilateral and multilateral international treaties of the Russian Federation on extradition and handing over persons sentenced to deprivation of freedom, on legal assistance, as well as multilateral treaties of the Russian Federation regulating interstate cooperation in combating individual types of crime (United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988, United Nations Convention against Corruption of 31 October 2003 and others). In connection with this, court should clarify whether the relevant foreign state is party to an international treaty of the Russian Federation.

When applying an international treaty of the Russian Federation, courts should take account of the provisions contained in ruling of the Plenary Session of the Supreme Court of the Russian Federation of 10 October 2003 No. 5 “On Application by Courts of General Jurisdiction of the Generally Accepted Principles and Rules of International Law and of International Treaties of the Russian Federation”.

To explain to courts that, if an international treaty of the Russian Federation concluded with a state party to the European Convention on Extradition of 13 December 1957 contains rules differing from those specified by the Convention, the provisions of this Convention prevail on the condition that such other rules do not supplement the provisions thereof or facilitate application of the principles contained therein (Provision 1 of Article 28 of the European Convention on Extradition).

A multilateral international treaty of the Russian Federation should be applied in consideration of any reservations made by the Russian Federation in the text of the law ratifying the international treaty.

3. In the absence of an international treaty, the Russian Federation may extradite or hand over a person to a foreign state, or recognise a sentence of a foreign court on the basis of the principle of reciprocity (Part 2 of Article 462, Article 469 of the Criminal Procedure Code of the RF), in accordance with which the foreign state may be expected, in an analogous situation, to extradite a person to the Russian Federation for criminal prosecution or execution of sentence, or hand over a citizen of the Russian Federation convicted by a court of the given foreign state to serve his sentence in the Russian Federation, and recognise a sentence handed down by a court of the Russian Federation in relation to its citizen for the sentence to be served in the given foreign state. In this case, the procedures for extraditing or handing a person over to a foreign state and recognising the sentence of a foreign court are regulated by the Criminal Procedure Code of the Russian Federation, other laws of the Russian Federation, the generally recognised principles and rules of international law, as well as international treaties of the Russian Federation on protection of fundamental human rights and freedoms, such as the International Covenant on Civil and Political Rights of 16 December 1966, Convention relating the Status of Refugees of 28 July 1951, and the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

4. It should be remembered that courts consider and decide on matters connected with extraditing or handing over a person to a foreign state or recognising a sentence of a foreign court in open court hearings, in consideration of the specifics envisaged in Chapters 54 and 55 of the Criminal Procedure Code of the RF.

5. The Russian Federation may extradite a person to a foreign state if the deed in connection with which a request for extradition has been submitted is punishable under the criminal law of the Russian Federation and the law of the requesting state (Part 1 of Article 462 of the Criminal Procedure Code of the RF). To draw the attention of courts to the fact that a discrepancy in the description of individual indicia of a crimes of which the individual is accused or in the judicial classification of the act does not constitute grounds for refusing extradition, since it is the actual circumstances of the act and its punishability under the laws of both states that should be considered.

When determining whether an act is punishable under the criminal law of the Russian Federation, account should be taken of the provisions of Articles 9 and 10 of the Criminal Code of the Russian Federation.

6. A person is subject to extradition if the Criminal Code of the Russian Federation and the law of the requesting state envisage the act covered by the extradition request, punishment in the form of deprivation of freedom for more than one year or harsher punishment or if the person has been convicted by a court of the requesting state to deprivation of freedom for at least six months or a harsher punishment, on the condition that an international treaty of the Russian Federation does not provide for other terms (Part 3 of Article 1, Provisions 1 and 2, Part 3 of Article 462 of the Criminal Procedure Code of the RF).

7. When considering an appeal against a decision on extradition, it should be borne in mind that existence of grounds impeding initiation of a criminal case or execution of a sentence and, as a consequence, entailing a refusal to extradite in compliance with Provision 4, Part 1 of Article 464 of the Criminal Procedure Code of the RF should be determined by the court in accordance with the legislation of the Russian Federation, unless an international treaty of the Russian Federation stipulates otherwise. In connection with this, it is not permitted to extradite to a member state of the European Convention if the statute of limitations has expired for criminal prosecution or serving of a sentence or under the legislation of the requesting state or of the Russian Federation (Article 10 of the European Convention on Extradition).

8. Evasion of law-enforcement agencies and a court of the requesting state suspends the statute of limitations for criminal prosecution or a guilty sentence. Evasion may be evidenced, among other things, by violation of the measures of restraint selected in the requesting state, if the individual was aware thereof; crossing of the state border of the requesting state after being held criminally liable for the purpose of hiding from the law-enforcement agencies and courts of this state; failure by the individual concerned to provide the given agencies and the court with information about his location, if it is established that he was aware of the criminal prosecution in the requesting state; failure to fulfil his obligation to register at his place of stay or having no permanent place of stay in the Russian Federation.

In considering the materials connected with extradition, account should be taken of the fact that justification of the circumstances testifying to evasion of the law-enforcement agencies and a court of the requesting state is the responsibility of the public prosecutor’s authorities of the Russian Federation (Part 3 of Article 463 of the Criminal Procedure Code of the RF). The court must verify the

individual's arguments that he did not hide from the law-enforcement agencies and court of the requesting state.

9. To clarify to courts that issue in the Russian Federation or in the requesting or other state of an act of amnesty applying to the crime for which the request for extradition was made constitutes grounds for refusing extradition if this is provided for by an international treaty of the Russian Federation. For instance, in accordance with Article 2 of the Additional Protocol to the European Convention on Extradition of 15 October 1975, an individual is not subject to extradition to a requesting state that is party to the given Protocol if a final judgment has been rendered and an act of amnesty releasing him from punishment in the form of deprivation of liberty has been applied in a third state party to the European Convention on Extradition with respect to the given individual. According to Article 4 of the Second Additional Protocol to the European Convention on Extradition of 17 March 1978, extradition to a contracting state of the given Protocol is not allowed if, in the Russian Federation, in relation to the offence on which the request for extradition is based an amnesty has been declared and the Russian Federation had the competence to prosecute under Articles 11 and 12 of the CC RF.

10. To draw the attention of courts to the fact that conditions and grounds for refusing extradition are established not only in the Criminal Procedure Code of the Russian Federation and other laws but also international treaties of the Russian Federation.

As follows from Provision 1 of Article 10 and Provision 4 of Article 12 of the Federal Law "On Refugees", Articles 32 and 33 Convention on refugee status of 28 July 1951, a person recognised as a refugee or receiving temporary asylum, in relation to whom the Russian Federation receives a request for extradition may not be extradited to the requesting state if the latter is the state of citizenship or usual residence of the given person or any other state wherein the circumstances constituting the grounds for granting temporary asylum or refugee status occurred.

11. According to Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights, and Article 11 the European Convention on Extradition, a person is not subject to extradition if the crime constituting the basis of an extradition request is a capital offence under the law of the requesting state and the said state provides no guarantees considered sufficient by the Russian Federation that capital punishment will

not be enforced. Such guarantees may consist in provisions of the legislation prohibiting capital punishment in the requesting state or assurances by the law-enforcement agencies or other competent bodies of the given state that, should the individual be sentenced to capital punishment, it will not be enforced.

12. Courts should bear in mind that, in accordance with Article 7 of the International Covenant on Economic, Social and Cultural Rights, as interpreted by the UN Commission on Human Rights, and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, an individual is also not subject to extradition if there are serious reasons to believe he may be subjected not only to torture but also inhuman and degrading treatment or punishment in the requesting state.

To clarify to courts that, in accordance with Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights, inhuman treatment or punishment includes when such treatment or punishment, as a rule, is intentional, continues for many hours or causes real physical injury or profound physical or mental suffering. Degrading treatment or punishment is understood, in particular, as such treatment or punishment that arouses terror, anxiety or a sense of inferiority in the victim.

A person should not be subjected to deprivation and suffering to a greater degree than is unavoidable, including during deprivation of freedom, and the health and welfare of the person should be guaranteed in consideration of the practical requirements of the custodial regime. The given level is assessed depending on the specific circumstances, in particular the duration of unlawful treatment, the nature of the physical and psychological consequences, bearing in mind the gender, age and state of health of the person who may be subjected to inhuman or degrading treatment or punishment.

13. Extradition may be refused when extraordinary circumstances testify that extradition would jeopardise the individual’s life and health, including in consideration of his age and physical condition (Article 9 of the Criminal Procedure Code of the RF, Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

14. To clarify to courts that, in the sense of Articles 7 and 15, Part 3 of Article 463, Article 464 of the Criminal Procedure Code of the RF, Article 3 of the Convention against Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment, and Articles 3 and 11 of the European Convention on Extradition, when considering an appeal against an extradition decision, it is the public prosecutor bodies of the Russian Federation that are responsible for justifying the circumstances testifying to absence of serious grounds to believe that the person may be subjected to capital punishment, torture, inhuman or degrading treatment or punishment, or may be persecuted on the grounds of raw, confession, citizenship, nationality, social group or political convictions.

According to Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as interpreted by the UN Committee against Torture, when determining whether or not the above circumstances exist, the court should bear in mind both the general situation with respect to observance of human rights and freedoms in the requesting state, and the specific circumstances of the case, which in aggregate may testify to presence or absence of serious grounds to believe that the individual may be subjected to the above types of treatment or punishment.

In connection with this, courts may take into account, for example, testimony given by the person to be extradited, by witnesses, an opinion of the Ministry of Foreign Affairs of the Russian Federation on the human rights and freedoms situation in the requesting state, guarantees provided by the requesting state, as well as reports and other documents adopted in relation to the given state by international non-contractual (Human Rights Council set up as an auxiliary body to the UN General Assembly) and contractual bodies (the UN Commission on Human Rights operating on the basis of the International Covenant on Economic, Social and Cultural Rights; the UN Committee against Torture, acting on the basis of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, operating in fulfilment of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987, etc.). Moreover, the court should assess the arguments put forward by the extraditable person in consideration of all the available evidence.

To draw the attention of courts to the fact that the assessment given by international non-contractual and contractual bodies of the overall human rights and freedoms situation in the requesting state might change over time.

15. To clarify to courts that selection and prolongation of measures of restraint in the form of detention, including determination of the time for holding in custody a person in relation to whom an extradition request is to be forwarded or a competent body of the Russian Federation has already received such a request are regulated by Part 2 of Article 97, by Articles 108, 109 and 466 of the Criminal Procedure Code of the RF, and Provision 1 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The court should also take account of the provisions specified in ruling of the Plenary Session of the Supreme Court of the Russian Federation of 29 October 2009 No. 22 "On the Practice of Application by the Courts of Preventive Measures in the Form of Remand in Custody, Bail and House Arrest".

16. When selecting (prolonging) a measure of restraint in the form of detention, the court should consider the possibility of choosing a different measures of restraint, which should suffice to ensure possible extradition. Impossibility of selecting (prolonging) a measure of restraint in relation to the given individual should be substantiated in the ruling on selecting detention as the measure of restraint or on prolonging such a measure (Part 1 of Article 108 of the Criminal Procedure Code of the RF).

A measure of restraint in the form of detention is selected (prolonged) in relation to an individual if there is information including on evasion thereby of the law-enforcement and the court of the requesting state.

17. In the meaning of Part 2 of Article 97, of Article 466 of the Criminal Procedure Code of the RF, the following, for example, may not serve as grounds for selecting or prolonging a measure of restraint in the form of detention: the complexity of the criminal case under investigation in the requesting state; lack of information about the individual's work; protracted verification of the legality of and justification for extradition; the individual being held administratively liable; absence of grounds for refusing extradition; a possible appeal against an extradition decision; protracted consideration by the competent bodies of a petition for refugee status, temporary or political asylum; non-expiry of the limitation periods for imposing criminal liability or executing a sentence in accordance with the legislation of the Russian Federation.

Voluntary attendance by the individual at the law-enforcement agencies of the Russian Federation, the fact that he has a dependent family in the Russian Federation, underage children, place of permanent

stay in the Russian Federation, or suffers from a serious illness might allow the court not to impose or prolong the given person's detention.

18. Until an extradition request is received, a measure of restraint, including in the form of detention, may be imposed by the court only in cases expressly envisaged by an international treaty of the Russian Federation.

When considering a petition from a public prosecutor for detention before an extradition request is received, the court should make sure that the following are in place:

a request for temporary custody meeting the following requirements set in Article 16 the European Convention on Extradition, if the requesting state is party to the given international treaty;

a petition for detention containing the information specified in Article 61 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22 January 1993, if the requesting state is party to the given international treaty;

an instruction to carry out a search, executed in accordance with Article 61 [1] of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, if the requesting state is party to the Protocol of 28 March 1997 to this Convention;

other documents required for detaining a person or applying other measures of restraint thereto before an extradition request is received, in accordance with applicable international treaties of the Russian Federation.

19. To draw the attention of courts to the fact that, in accordance with Part 1 of Article 62 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, a person should not be detained for more than a month before an extradition request is received. If the requesting state is party to the Protocol to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, the given period may not exceed forty days.

The periods for which an individual may be detained before an extradition request is received may also be set in bilateral international treaties of the Russian Federation. Whereat, if the requesting state is simultaneously, party to an international treaty of the Russian Federation and the European

Convention on Extradition, the detention period before an extradition request is received should not exceed forty days (Article 28 of the European Convention on Extradition).

The given periods are subject to consideration by courts when they determine how long to detain a person before an extradition request is received.

To clarify to courts that, in the absence of an extradition request, a measure of restraint in the form of detention is applied and subsequently prolonged, including on receipt of an extradition request, only by a court of the Russian Federation, specifying the term for which and the date until which the given measure of restraint is applied (prolonged) (Part 2 of Article 97, Articles 108, 109 and 128 of the Criminal Procedure Code of the RF).

If the Russian Federation does not receive a duly executed extradition request by the deadline set in an international treaty of the Russian Federation, the relevant individual is to be released from custody.

20. It should be borne in mind that selection and subsequent prolongation of a measure of restraint in the form of detention for a person for whom an extradition request has been received without a decision of a judicial body of the requesting state on selection of a measure of restraint in the form of detention in relation to the given person are permitted only by a court ruling adopted on the basis of a petition from a public prosecutor in the manner envisaged by Article 108 of the Criminal Procedure Code of the RF.

21. If a decision of a judicial body of a foreign state on taking such a person into custody is attached to an extradition request, in accordance with Part 2 of Article 466 of the Criminal Procedure Code of the RF, a public prosecutor is entitled to detain him without confirmation of the given decision by a court for a maximum of two months from the time of detention (Part 1 of Article 109 of the Criminal Procedure Code of the RF). A measure of restraint may be prolonged exclusively by a court.

A detention decision of a public prosecutor may be appealed in court in the manner envisaged by Article 125 of the Criminal Procedure Code of the RF.

22. It should be remembered that, in accordance with Article 22 of the Constitution of the Russian Federation and in the sense of Articles 108 and 109 of the Criminal Procedure Code of the RF, the

court is not entitled refuse to consider a petition from a public prosecutor for application of a measure of restraint in the form of detention or house arrest to someone for whom an extradition request has been received, together with a decision of a judicial body of the requesting state on selecting the measure of restraint in the form of detention.

23. Courts should take into account that the custody term should be determined by the need to decide on the matter of extradition of the given person, including his actual handing over to the requesting state (Part 1 of Article 466 of the Criminal Procedure Code of the RF). Whereat the total time in custody should not exceed that envisaged by Article 109 of the Criminal Procedure Code of the RF for an offence of the relevant category in connection with which the extradition request was submitted.

24. For the purpose of effectively protecting rights and freedoms, including right to appeal an extradition decision, in accordance with Article 46 of the Constitution of the Russian Federation and Part 6 of Article 462 of the Criminal Procedure Code of the RF, in consideration of Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the relevant individual should be notified of the decision taken and, at the same time, furnished with a copy thereof. If he does not speak Russian well enough, in accordance with Part 3 of Article 18 of the Criminal Procedure Code of the RF, the given documents are to be translated into his native language or a language he speaks.

25. To draw the attention of courts to the fact that, during consideration of the materials on extradition, matters not regulated by Chapter 54 of the Criminal Procedure Code of the RF are to be decided on the basis of the general provisions of the Criminal Procedure Code of the Russian Federation. For instance, when selecting (prolonging) a measure of restraint or considering an appeal against an extradition decision, courts should keep in mind instances specified by the Criminal Procedure Code of the Russian Federation when participation by an interpreter and defence counsel is obligatory.

An appeal against an extradition decision is considered with the participation of the person whose extradition is requested (Part 4 of Article 463 of the Criminal Procedure Code of the RF). If the given person has absconded, the appeal is considered without his participation but attendance by the defence counsel is mandatory.

26. In the sense of Article 463 of the Criminal Procedure Code of the RF, the question of the legality and justification of an extradition decision is decided proceeding from the circumstances at the time the decision is taken. In connection with this, if a petition is made to the competent bodies for temporary or political asylum or refugee status after the extradition decision has been passed, this should not entail deferred consideration of an appeal against the extradition decision, since, if the court recognises such decision as lawful and substantiated, this does not dictate that the individual is in fact subsequently handed over to the requesting state before the matter of his petition is decided or the appeals procedure is completed, should such a petition be rejected (Article 14 of the Universal Declaration of Human Rights of 10 December 1948, Article 33 of the Convention relating to the Status of Refugees, Articles 3 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

27. Should the European Court of Human Rights adopt interim judicial measures prescribing that the authorities of the Russian Federation refrain from extraditing a person to a foreign state, this should not entail deferred consideration of an appeal against an extradition decision. Proceeding from the provisions of Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms, a person should not actually be handed over until the European Court of Human Rights cancels the interim measures or a judgment of the European Court of Human Rights comes into effect with respect to the results of consideration of the appeal in connection with which the relevant interim measures was applied.

28. Courts should keep in mind that, in the sense of Article 15 of the Criminal Procedure Code of the RF, Article 14 the European Convention on Extradition, as well as Provision 1 of Article 14 of the International Covenant on Economic, Social and Cultural Rights, when considering an appeal by defence counsel against additional consent of the Public Prosecutor General of the Russian Federation to a previously extradited person being held criminally liable in the requesting state for the offence committed before his extradition and for which he was extradited, such a person who has not filed an appeal has the right to inform a court of the Russian Federation of his position on the case in writing or, if possible, by video-conferencing.

To draw the attention of courts to the fact that an international treaty of the Russian Federation may oblige a requesting state party to the given treaty to attach to the request for such consent a statement

by the extradited person concerning the offence constituting the basis of the request (Subprovision “a” of Provision 1 of Article 14 of the European Convention on Extradition).

29. When a court of the Russian Federation considers a criminal case in relation to a person previously extradited by the Russian Federation, it should bear in mind that such a person may not be held criminally liable for or convicted of a crime not specified in the extradition request and committed before extradition without the consent of the requested state (Part 1 of Article 461 of the Criminal Procedure Code of the RF). To clarify to courts that if, during an investigation, the determining indicia of the crime for which the individual was extradited by the Russian Federation are established or changed, additional consent from the requested state is required, should the given indicia testify that the individual committed another crime before being extradited, such as murder combined with robbery or extortion (Provision “z”, Part 2 of Article 105 of the CC RF), on the condition that the individual was previously extradited by the Russian Federation in connection with acts envisaged by Part 1 of Article 105 of the CC RF. Such consent is also required if, as a consequence of change to the determining features of an act for which a person was extradited, the given person’s position deteriorates.

When deciding on selection of a measure of restraint or considering an appeal against a decision on extradition for criminal prosecution, the court is not entitled to decide in advance the guilt or innocence of the person for whom an extradition request is anticipated or for whom an extradition request has already been received by the Russian Federation (Article 14 of the Criminal Procedure Code of the RF, Part 6 of Article 463 of the Criminal Procedure Code of the RF, Provision 2 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms). In particular, the wording of the judicial decision should not testify to the fact of the person having committed a crime being established.

31. Proceeding from the provisions of Subprovisions 1 and 2, Part 3 of Article 462, Part 7 of Article 463 of the Criminal Procedure Code of the RF, Subprovisions 3–6, Part 1, Part 2 of Article 464 of the Criminal Procedure Code of the RF, the court is entitled to recognise an extradition decision as lawful and justified in part.

32. To clarify to courts that the provisions of Chapter 55 of the Criminal Procedure Code of the RF apply to cases of handing over someone to serve a sentence to the state of which he is a citizen when such person is serving a custodial sentence. Whereat courts should take into account the minimum time left to serve as set as a condition for handing over by an international treaty of the Russian Federation or an agreement by competent bodies of the Russian Federation and of a foreign state, if the individual is handed over on the basis of the principle of reciprocity.

33. Attention should also be paid to the fact that an international treaty of the Russian Federation may provide for the possibility of handing over a prisoner to serve a sentence not only in the state of which he is a citizen but also in that where he is permanently resident (Article 2 of Convention on the Transfer of Sentenced Prisoners to Continue Serving a Custodial Sentence of 6 March 1998).

34. Courts should consider the fact that the conditions for transferring a person to serve a sentence in a foreign state, as well as the grounds for refusing to do so, are determined by the provisions contained both in international treaties of the Russian Federation and in the Criminal Procedure Code of the Russian Federation. Consequently, observance of the conditions for transfer prescribed in Article 3 of the Convention on the Transfer of Sentenced Prisoners of 21 March 1983 does not exclude the possibility of refusing to hand someone over to a state party to the given international treaty of the Russian Federation on the grounds specified by Article 471 of the Criminal Procedure Code of the RF, for example, if the convicted person or the state in which the sentence is to be executed have not provided guarantees of execution of civil claim judgment.

In connection with this, to draw the courts' attention to the fact that, in the sense of Articles 8 and 307, Chapter 23 of the Civil Code of the Russian Federation, guarantees of execution of a civil claim judgment may consist, in particular, in a bond, surety or bank guarantee.

Since the grounds listed in Article 471 of the Criminal Procedure Code of the RF for refusing to hand someone over are exhaustive in character, when a prisoner is transferred to serve a sentence in a foreign state, no guarantee is required from the convicted person or the given state of enforcement of additional punishment in the form of a fine imposed by a court of the Russian Federation, unless an international treaty of the Russian Federation prescribes otherwise.

35. When considering materials on transferring someone to serve a sentence in a foreign state, proceeding from the provisions of Articles 471 and 472 of the Criminal Procedure Code of the RF and relevant international treaties of the Russian Federation, courts should establish availability of the convicted person's consent to such transfer, as well as the consent of the sentencing and administering states thereto. Unless an international treaty of the Russian Federation stipulates otherwise, the bodies authorised to give such consent are determined by the legislation of the sentencing or administering state. This may be courts, the Public Prosecutor's Office, the Ministry of Justice or others.

To clarify to courts that, given the consent of a competent body of a foreign state to transferring a sentenced person but the absence of a decision of a foreign court or other body in recognition and execution of a sentence handed down by a court of the Russian Federation does not constitute grounds for refusing to transfer the given person, since an international treaty of the Russian Federation may provide for such a decision being taken after the sentenced person has actually been handed over.

36. Incomparability of the conditions and manner for the convicted person to serve a custodial sentence, being, in accordance with Article 471 of the Criminal Procedure Code of the RF, one of the grounds for refusing to hand him over, are understood as such differences in the conditions and the manner of serving a sentence in the administering state and the Russian Federation that preclude achieving the purpose of the punishment: restoration of social, correction of the sentenced person and prevention of new crimes (Article 43 of the CC RF).

In each specific case, the court must establish the circumstances connected with the manner and conditions for serving a sentence in the administering state. Whereat, absence in a foreign state of the specific type of correctional facility appointed for the sentenced person by a court of the Russian Federation should not dictate refusal to transfer him if the conditions and the manner for serving a sentence in the administering state are, in general, comparable with those in the Russian Federation.

37. Proceeding from the provisions of Articles 10 and 11 of the Convention on the Transfer of Sentenced Prisoners and Article 12 of the Convention on the Transfer of Sentenced Prisoners to Continue Serving a Custodial Sentence, grounds for refusing to hand a person over are not provided either by the fact that the legislation of the administering state sets a shorter minimum custodial sentence for the convicted person's acts than the sentence handed down by the court of the Russian

Federation. The maximum custodial term envisaged by the legislation of the administering state should not be clearly incomparable with the term of the sentence handed down by the court of the Russian Federation.

38. To draw the attention of courts to the fact that the provisions of Article 472 of the Criminal Procedure Code of the RF do not presume participation by the sentenced person in consideration by the court of the materials connected with recognising the sentence of a foreign state, unless an international treaty of the Russian Federation envisages otherwise.

39. To clarify to courts that if a sentence handed down by a court of a foreign state provides for the convicted person's monetary obligation expressed in the currency of that or another state, proceeding from the provisions of Part 2 of Article 472 of the Criminal Procedure Code of the RF and Article 72 of the Federal Law "On Execution Proceedings", when recognising a sentence of a court of a foreign state, the court of the Russian Federation should specify the convicted person's monetary liability in the same currency.

40. If, when considering materials on extradition, transferring a person to a foreign state or recognising a sentence of a court of a foreign state, the court identifies violations of human rights and freedoms or other violations of the law, it is entitled to issue a partial ruling or resolution, drawing the attention of the relevant organisations and officials to such breaches of the law requiring that requisite measures be undertaken (Part 4 of Article 29 of the Criminal Procedure Code of the RF).

41. In connection with adoption of this ruling, to delete § 3 from Provision 34 of ruling of the Plenary Session of the Supreme Court of the Russian Federation of 29 October 2009 No. 22 "On the Practice of Application by the Courts of Preventive Measures in the Form of Remand in Custody, Bail and House Arrest" (as amended by rulings of the Plenary Session of 10 June 2010 No. 15, of 23 December 2010 No. 31 and of 9 February 2012 No. 3).

Ruling of the Plenary Session of the Supreme Court of the Russian Federation of 19 June 2012 No. 13 Moscow "On Application by Courts of the Rules of the Civil Procedural Legislation Regulating Proceedings in an Appeal Court"

Federal Law of 9 December 2010 No. 353-FZ "On Amending the Civil Procedure Code of the Russian Federation" introduced substantial changes into the legal regulation of the rules for verifying the legality of and justification for not yet legally effective judicial rulings issued on civil cases by magistrates and federal courts of general jurisdiction of the first instance.

In connection with questions facing courts in applying the given Law, for the purposes of ensuring correct and unified application by courts of the rules of the Civil Procedure Code of the Russian Federation (hereinafter the CPC RF), the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation and by Articles 9 and 14 of the Federal Constitutional Law "On Courts of General Jurisdiction in the Russian Federation", resolves to provide courts with the following clarifications:

General provisions

Judicial rulings subject to appeal

Persons entitled to file an appeal

1. The appeal court verifies the legality of and justification for decisions and rulings of courts of general jurisdiction adopted at the first instance that have not yet come into legal effect.

No possibility is envisaged by the CPC RF for appealing against court orders. A court order may be appealed to a cassation court in the manner, within the time and on the grounds specified by Chapter 41 of the CPC RF.

2. Courts should take into account the fact that an appeal and an appeal recommendation may be filed not only against a court decision as a whole but also against part thereof, such as the resolutive or reasoned part, on matters of distributing court costs between the parties, the procedure and term for execution of a decision, security for its execution and other matters resolved by the court when issuing

a decision, as well as against an additional decision issued in the manner of Article 201 of the CPC RF.

If an appeal or an appeal recommendation is filed not against a court decision as a whole but only a part thereof or an additional decision, the appealed decision does not then come into legal effect.

3. In accordance with Part 2 of Article 320 of the CPC RF, the parties to and other participants in a case are entitled to appeal a decision of a first instance court, while an appeal recommendation may be made by a public prosecutor participating in the case.

In the sense of the provisions of Articles 34, 35 and 45 of the CPC RF, a public prosecutor participating in a case is the one that applied to a first instance court for protection of rights, freedoms and legitimate interests of other persons or participated in the proceedings to provide a conclusion on cases in which his participation is stipulated by the CPC RF and other federal laws. Whereat a public prosecutor has the right to make an appeal recommendation no matter whether he personally attends the court sessions of the first instance court.

A public prosecutor is also entitled to make an appeal recommendation even if he has not been summoned by the first instance court to participate in a case in which his participation is mandatory by virtue of law (Part 3 of Article 45 of the CPC RF).

To draw the attention of courts to the fact that, by virtue of Part 4 of Article 13 and Part 3 of Article 320 of the CPC RF, people not involved in a case are entitled to lodge an appeal court appeal against a first instance court decision if the given decision is issued on a matter relating to their rights and obligations, i.e., they are deprived of, restricted in or granted rights and (or) obligations are imposed thereon. Whereat such persons do not have to be specified in the reasoned and (or) resolutive parts of the judicial ruling.

The right to lodge an appeal is also enjoyed by legal successors of case participants that did not speak during the first instance proceedings on the case.

An appeal may be filed both by a person actually participating in a case or by someone not involved in the case but whose rights and obligations were decided by the court, and by their duly authorised

representatives (Article 48 of the CPC RF) or legal representative (Article 52 of the CPC RF). The representative's authority to file an appeal should be documented in accordance with Articles 53 and 54 of the CPC RF.

Courts should take into account the fact that an individual recognised as legally incompetent in accordance with Part 3 of Article 284 of the CPC RF is entitled to make an appeal either personally or through his chosen representatives to an appeal court against the court decision recognising him as legally incompetent. The question of the possibility of such a person participating personally in a court session held at the appeal court should be decided in consideration of Provision 1, Part 1 of Article 284 of the CPC RF. If personal participation by such a person in a court session held at the appeal court jeopardises his life or health or those of others and the given circumstance is confirmed by a relevant medical document, the appeal may be considered by the appeal court in his absence.

In accordance with Articles 4, 34, 35, 46 and 47 of the CPC RF, the right to appeal judicial rulings of a first instance court is also enjoyed by persons that, in cases specified by law, appeal to a court for protection of rights, freedoms and legitimate interests of other persons or take part in proceedings to provide a conclusion on the case for the purposes of fulfilling the obligations they bear under federal law.

It follows from Subprovision 1 of Part 1 of Article 29 of the Federal Constitutional Law of 26 February 1997 No. 1-FKZ "On the Human Rights Ombudsman in the Russian Federation" that the Human Rights Ombudsman in the Russian Federation has the right to appeal judicial rulings of a first instance court, if he participated personally or through his representative in consideration of the case in the first instance court. The given right is exercised thereby in the manner and by the times stipulated by Chapter 39 of the CPC RF.

4. For the purposes of ensuring exercise of the right to appeal by case participants, the first instance courts should, in accordance with Part 5 of Article 198 and Provision 7 Part 1 of Article 225 of the CPC RF, specify in the resolutive part of a decision or ruling the procedure and period for appealing a judicial ruling of the first instance court.

The period and procedure for lodging an appeal or appeal recommendation

Response by a first instance court to receipt of an appeal or appeal recommendation

5. In accordance with Part 1 of Article 321 of the CPC RF, an appeal or appeal recommendation with respect to a court decision of the first instance that has not come into legal effect is filed with the court that issued the decision.

Filing of appeals or appeal recommendations directly to the appeal court does not constitute grounds for returning them to the appellant. Proceeding from the provisions of Part 1 of Article 321 of the CPC RF, such appeals or appeal recommendations are subject to being forwarded, together with an accompanying letter from the appeal court, to the court that issued the decision for the latter to perform the actions envisaged by Article 325 of the CPC RF, to which effect the person that filed the appeal or appeal recommendation is notified.

6. In accordance with Part 3 of Article 107 and Article 199 of the CPC RF, the period of one month for appeals or appeal recommendations, as stipulated by Part 2 of Article 321 of the CPC RF, runs from the day following that when the reasoned court decision is drawn up (the final form of the court decision is adopted) until, in accordance with Article 108 of the CPC RF, the corresponding day of the following month.

If drafting of the reasoned court decision is deferred for a certain time, which, by virtue of Article 199 of the CPC RF, should not exceed five days from completion of the case proceedings, according to the provisions of Part 2 of Article 193 of the CPC RF, the presiding judge explains to the case participants and their representatives, when announcing the resolutive part of the court decision, when they may familiarise themselves with the reasoned part of the court's decision, which, on the basis of Provision 13 Part 2 of Article 229 of the CPC RF, should be reflected in the minutes of the court session.

The deadline for filing appeals or appeal recommendations is not considered to have been missed if they were handed over to a postal organisation before midnight on the last day of the allotted period (Part 3 of Article 108 of the CPC RF). In this case, the filing date of the appeal or appeal recommendation is determined from the stamp on the envelope, the receipt for acceptance of recorded correspondence or another document confirming acceptance thereof (post office statement, copy of the postal correspondence dispatch register, and the like). The given rules also apply in relation to appeals or appeal recommendations filed directly with the appeal court.

Courts should take into account the fact that the CPC RF may provide for reduced periods for filing appeals or appeal recommendations against judicial rulings on individual categories of case. For instance, Part 3 of Article 261 of the CPC RF sets a shorter limitation period for filing appeals or appeal recommendations with respect to judicial rulings issued on cases relating to protection of electoral rights and rights to participate in a referendum of citizens of the Russian Federation during an election campaign or referendum campaign before voting day, the given term being five days from adoption of the appealed judicial ruling.

7. A person who misses the period for filing an appeal may apply to or petition the court that issued the decision for the missed procedural period to be reinstated. The application (petition) should state the reasons for the appeal or appeal recommendation filing period having been missed.

An application for reinstatement of a missed period should, in accordance with the requirements of Part 3 of Article 112 of the CPC RF, be filed with the first instance court in conjunction with an appeal or appeal recommendation meeting under the requirements of Article 322 of the CPC RF.

The attention of the court should be drawn to the fact that a relevant request by a person that has missed the appeal period may be contained in the actual appeal or appeal recommendation itself.

At the same time, account should be taken of the fact that, when appeals or appeal recommendations are filed against judicial rulings and the question is simultaneously raised of reinstating a missed procedural term, the first instance court initially decides on reinstatement of the term and then fulfils the requirements of Article 325 of the CPC RF and refers the case, together with the appeal or appeal recommendation, for consideration by the appellate court. If the reasons for missing the procedural term are not recognised as good ones, on the basis of Provision 2, Part 1 of Article 324 of the CPC RF, the appeal or appeal recommendation is returned to the filer once the ruling refusing reinstatement of the missed procedural term comes into legal effect.

8. An application for reinstatement of the period for filing appeals or appeal recommendations is considered in a first instance court session according to the rules of Article 112 of the CPC RF and the case participants are notified to this effect. Their failure to attend does not preclude the court from deciding on the matter before it.

On the basis of Article 112 of the CPC RF, a first instance court reinstates the period for filing appeals or appeal recommendations if it recognises the reasons for missing it as good ones.

For participants in a case, good reasons for missing the given period might include, in particular: circumstances connected with the individual filing the appeal (serious illness, incapacity, illiteracy, and the like); receipt by a person that did not attend the final court session on a case of a copy of the court decision after expiry of the term for filing an appeal or when the time remaining for doing so is clearly inadequate for reading all the case files and drawing up a reasoned appeal or appeal recommendation; failure by the first instance court, in violation of the requirements of Article 193 and Part 5 of Article 198 of the CPC RF, to explain the procedure and term for appealing a court decision; failure by the court to observe the term set in Article 199 of the CPC RF by which drawing up of the reasoned court decision may be deferred or that set by Article 214 of the CPC RF for sending out copies of the court decision to the participants in the case who did not attend the final court session on the case, if such violations are made it is impossible to prepare and file a reasoned appeal or appeal recommendation by the set deadline.

When deciding on reinstating the period for filing an appeal for persons not participating in a case on which the court has issued a decision relating to their rights and obligations, first instance courts should take into account whether such persons filed an application (petition) for reinstatement of the given period in good time. This is determined proceeding from the time periods established by Articles 321 and 332 of the CPC RF, which run from the time when such persons found out or should have found out about violation of their rights and (or) imposition thereon of the obligations by the appealed court ruling.

If a public prosecutor misses the deadline for filing an appeal recommendation, this does not deprive the person in whose interests the public prosecutor applied to the first instance court of its right to enter its own application (petition) for reinstatement of the period for filing the appeal.

At the same time, if a legal entity misses the appeal deadline because the organisation’s representative is on a business trip or vacation, the CEO is replaced or is on a business trip or vacation, there is no corporate lawyer, and the like, these are not recognised as good reasons.

9. Proceeding from the provisions of Provision 5, Part 1 of Article 225 of the CPC RF, a ruling of a first instance court on reinstating or refusing to reinstate an appeal term should be reasoned. A special appeal or appeal recommendation by a public prosecutor may be entered against such a ruling in accordance with Part 5 of Article 112 of the CPC RF.

If a ruling refusing to reinstate the term for filing appeals or appeal recommendations is reversed and this term is reinstated or a ruling on reinstating the given term is upheld, the appeal court refers the case, together with the appeal or appeal recommendation, to the first instance court for verification that they meet the requirements of Article 322 of the CPC RF and for performance of the actions envisaged by Article 325 of the CPC RF.

At the same time, for the purposes of observing reasonable times for administration of justice (Article 6 [1] of the CPC RF), the appellate court is entitled not to refer the case, together with the appeal or appeal recommendation, to the first instance court, if it establishes that the appeal or appeal recommendation meets the requirements of Article 322 of the CPC RF. In this case, the appeal court performs the actions envisaged by Part 1 of Article 325 of the CPC RF and notifies the case participants of the time and place where the appeal or appeal recommendation will be considered.

10. After appeals or appeal recommendations are received by the first instance court, proceeding from the requirements of Articles 320, 321 and 322 of the CPC RF, the judge should verify whether: the judicial ruling is subject to appeal in the appellate court; the appellant or the public prosecutor filing the appeal recommendation is entitled to make an appeal; the legally established term for filing an appeal or appeal recommendation has been observed; the requirements of the law relating to the content of appeals or appeal recommendations have been observed; a power of attorney or other document certifying the powers of the representative has been attached, if the case files do not include documents certifying the powers of the representative; the appeals or appeal recommendations have been signed; the number of copies of the appeals or appeal recommendations and documents attached thereto coincides with the number of case participants; the state duty has been paid for the appeal, when this is required by law

11. In the meaning of Part 3 of Article 320, Parts 2 and 4, Part 1 of Article 322 of the CPC RF, an appeal lodged by a person not participating in the case should contain a substantiation that its rights

have been violated and (or) obligations imposed thereon by the appealed court decision. In connection with this, first instance courts should verify that such substantiation is included in the appeal filed by a person not involved in the case.

In the absence of such substantiation, in accordance with Part 1 of Article 323 of the CPC RF, the first instance court defers consideration of the appeal and allocates a reasonable time for remedying the given shortcoming.

12. In accordance with the requirements of Provision 2, Part 2 of Article 322 of the CPC RF, the first instance court should verify that the appeal or appeal recommendation contains a reference to additional (new) evidence, and justification by the appellant of the impossibility of having produced them for the first instance court for reasons not dependent thereon or on the public prosecutor filing the appeal recommendation.

The attention of courts should be drawn to the fact that the first instance court is not entitled to give an assessment of the nature of the reasons (good or otherwise) for it not being possible to produce the additional (new) evidence to the first instance court, since, proceeding from the requirements of Provision 2, Part 1 of Article 327 [1] of the CPC RF, the question of accepting and investigating additional (new) evidence is decided by the appeal court.

Persons not involved in the case but in relation to whose rights and obligations a question is decided by the court are entitled to refer, in an appeal, to any additional (new) evidence that was not investigated or assessed by the first instance court, since such persons were deprived of the opportunity to exercise their rights and obligations during consideration of the case in said court.

13. If an appeal or appeal recommendation does not comply with the requirements of Part 1 of Article 322 of the CPC RF; does not contain a substantiation of the impossibility of producing additional (new) evidence for the first instance court if reference is made thereto; is filed without sufficient copies for all the case participants and copies of documents attached thereto; is not signed by the appellant or its representative or the public prosecutor lodging the appeal recommendation, or the appeal filed by the representative does not have a power of attorney or other a document certifying the representative’s powers attached; no document is attached to the appeal confirming payment of state duty, when such payment is required by law, on the basis of Part 1 of Article 323 of the CPC RF, the

judge shall, within a maximum of five days following receipt of the appeal or appeal recommendation, issue a ruling on deferring consideration of the appeal or appeal recommendation and setting a reasonable time for remedying the given shortcomings.

Account should be taken of the fact that, if an appeal or appeal recommendation, in violation of the provisions of Provision 4, Part 1 of Article 322 of the CPC RF, makes no reference to the grounds on which the appellant or the public prosecutor filing the appeal recommendation deemed the appealed court ruling to be subject to cancellation or amendment (Article 330 of the CPC RF) or to claims falling within the terms of reference of the appellate court (Article 328 of the CPC RF), on the basis of Part 1 of Article 323 of the CPC RF, the judge issues a ruling on deferring consideration of the appeal or appeal recommendation and setting a reasonable time for remedying the given shortcomings.

If in appeal or appeal recommendations contains, in violation of the provisions of Provision 1, Part 2 of Article 322 of the CPC RF, substantive law claims that were not entered during consideration of the case in the first instance court, on the basis of Part 1 of Article 323 of the CPC RF, the judge issues a ruling on deferring consideration of the appeal or appeal recommendation and setting a reasonable time for remedying the given shortcoming. The judge is not, however, entitled to defer consideration of an appeal or appeal recommendation containing substantive law claims not previously entered during consideration of the case in the first instance court but that the said court should have decided on its own initiative, in consideration of the provisions of Part 3 of Article 196 of the CPC RF, in cases specified by federal law.

For instance, on cases relating to deprivation or restriction of parental rights, the court decides the question of alimony for the child (Part 3 of Article 70 and Part 5 of Article 73 of the Family Code of the Russian Federation); when satisfying a claim for a transaction to be recognised as invalid, the court decides the question of application of the consequences of transaction invalidity (Part 2 of Article 166 and Article 167 of the Civil Code of the Russian Federation); when satisfying a consumer's claims, the court decides the question of imposing a fine on the manufacturer (service provider, seller, etc.) for failing to satisfy the consumer's claims voluntarily (Part 6 of Article 13 of the Law of the Russian Federation "On Consumer Rights").

The first instance court should set the time for remedying shortcomings in an appeal or appeal recommendation in consideration of the realistic possibility of the appellant remedying them and the time required for dispatch and delivery of postal correspondence, on the basis of how far the court is from the place of residence or stay of the appellant or other circumstances.

Under Article 111 of the CPC RF, a first instance court may, on the basis of a petition from the appellant, prolong the time given for remedying shortcomings in an appeal or appeal recommendation.

When applying Article 323 of the CPC RF, it should be borne in mind that the circumstances providing grounds for deferring consideration of an appeal or appeal recommendation are deemed eliminated once the first instance court receives the requisite documents and the appeal or appeal recommendation is deemed to have been filed when first received by the court.

A special appeal or appeal recommendation of a public prosecutor against a judge's ruling deferring consideration of an appeal or appeal recommendation may be filed in the manner and by the time established by Chapter 39 of the CPC RF.

14. In accordance with Article 324 of the CPC RF, a judge issues a ruling on returning an appeal or appeal recommendation if: it is established that the judge's instructions contained in a ruling on deferring consideration of an appeal or appeal recommendation have not been fulfilled on time; the appeal term has elapsed and the appellant has not requested its reinstatement or reinstatement thereof has been refused; a request has been received from the appellant, before the case is referred to the appellate court, for the appeal to be returned thereto or a public prosecutor has recalled an appeal recommendation by filing a relevant written application.

If a person not involved in a case fails to fulfil on time the judge's instructions contained in a ruling on deferring consideration of an appeal on substantiating violation of its rights and (or) obligations imposed thereon by the appealed court decision, on the basis of Part 4 of Article 1, Provision 4 Part 1 of Article 135 and Article 324 of the CPC RF, the judge issues a ruling on returning the appeal.

If an appeal or appeal recommendation is entered against a court ruling that is not subject to appeal through the appellate court, on the basis of Part 4 of Article 1, Provision 2, and Part 1 of Article 135

and Article 324 of the CPC RF, the judge issues a ruling on returning the appeal or appeal recommendation.

A special appeal or appeal recommendation of a public prosecutor against a judge's ruling returning an appeal or appeal recommendation may be filed in the manner and by the time established by Chapter 39 of the CPC RF.

15. In accordance with the provisions of Part 1 of Article 325 of the CPC RF, after an appeal or appeal recommendation filed by the set time and in observance of the requirements established thereon by Article 322 of the CPC RF has been received or after the appellant has remedied the shortcomings specified in a ruling on deferring consideration of an appeal or appeal recommendation, the first instance court shall promptly send the case participants copies of the appeal or appeal recommendation, together with copies of the documents attached thereto.

To draw the attention of courts to the fact that, in accordance with Part 2 of Article 325 of the CPC RF, all case participants should be provided with an opportunity to familiarise themselves not only with the appeal or appeal recommendation, but also any objections received thereto before the case is referred to the appeal court.

In connection with this, when sending copies of the appeal or appeal recommendation and documents attached thereto to the case participants, the first instance court should specify in an accompanying letter a reasonable time for filing any objections thereto. The given period is determined, in particular, in consideration of the time required to dispatch and deliver postal correspondence, how far the court is from the place of residence or stay of the case participants, the scope of the appeal or appeal recommendation, the complexity of the case and the like. The time allowed for entering objections, in consideration of when an appeal or appeal recommendation is filed (for example, on the last day of the appeal period), may be determined by the court beyond the scope of the month allowed by Part 2 of Article 321 of the CPC RF for an appeal.

In consideration of the requirements of Part 2 of Article 325 of the CPC RF, objections to an appeal or appeal recommendation are sent to the first instance court with enough copies for all the case participants.

On expiry of the period set by the court for entering objections, the first instance court promptly refers the case to the appeal court, but not until the appeal period has expired (Part 3 of Article 325 of the CPC RF). If objections to an appeal or appeal recommendation are received by the first instance court after the case has been referred to the appeal court, the objections are also sent to said appellate court and copies thereof are sent to the case participants.

16. Until a case is sent to the appellate court, in accordance with Articles 200 and 201 of the CPC RF, the first instance court should, on its own initiative and proceeding from the arguments put forward in the appeal or appeal recommendation or on the basis of an application from case participants, correct any misprint or obvious arithmetical error in the court's decision and adopt an additional decision in cases envisaged by Part 1 of Article 201 of the CPC RF.

The attention of first instance courts should be drawn to the fact that, proceeding from the requirements of Articles 200 and 201 of the CPC RF, the question of correcting misprints or obvious arithmetical errors or adopting an additional decision is considered in a court session and the case participants are notified to this effect.

Actions of an appeal court after receiving a case with an appeal or appeal recommendation

17. After receiving a case with an appeal or appeal recommendation filed within the time set by Article 321 of the CPC RF and complying with the requirements of Article 322 of the CPC RF, the judge of an appellate court accepts the appeal or appeal recommendation for hearing by the appeal court and prepares the case for judicial proceedings.

If necessary, a ruling may be issued during preparation of a case for judicial proceedings specifying the procedural actions the appellate court intends to perform, as well as those to be performed by the case participants and the time allotted for doing so.

18. If an appeal court receives a case with an appeal or appeal recommendation filed after the period set by Article 321 of the CPC RF has elapsed and (or) not complying with the requirements of Parts 1–3 and 5 of Article 322 of the CPC RF, before accepting the appeal or appeal recommendation for hearing, the relevant court returns it, together with the case and an accompanying letter, to the first

instance court for performance of the procedural actions envisaged by Articles 323, 324 and 325 of the CPC RF.

If, before the case is referred to the appeal court, the first instance court does not correct misprints or obvious arithmetical errors in the court decision or adopt an additional decision in cases envisaged by Part 1 of Article 201 of the CPC RF, before accepting the appeal or appeal recommendation for hearing, the appeal court returns it, together with the case and an accompanying letter, to the first instance court for performance of the procedural actions envisaged by Articles 200 and 201 of the CPC RF.

19. All appeals and appeal recommendations filed against a single judicial ruling of the first instance court should be appointed for consideration and be considered by a court session of the appellate court.

If, after the appeal period has expired and a case with an appeal or appeal recommendation has been referred to the appeal court, the first instance court receives appeals or appeal recommendations from other case participants or persons not involved in the case whose rights and obligations have been decided by the court, it should immediately notify the appeal court to this effect.

If the appeal judge receives information about other appeals or appeal recommendations being filed and the previously filed appeal or appeal recommendation has not yet been accepted for hearing by the appellate court, he returns the case, with an accompanying letter, to the first instance court for performance of the procedural actions envisaged by Articles 323, 324 and 325 of the CPC RF.

If the previously filed appeal or appeal recommendation has already been accepted for hearing by the appeal court and there is information that other appeals or appeal recommendations have been received with respect to Article 169 of the CPC RF, the relevant court defers consideration of the case and, if necessary, performance of the procedural actions envisaged by Articles 323, 324 and 325 of the CPC RF, returns the case to the first instance court and issues a relevant ruling to this effect. In this case, the time for consideration of the case in the appeal court, as established by Article 327 [2] of the CPC RF, runs from when the given court receives the last appeal or appeal recommendation.

For the purposes of observing reasonable times for administration of justice (Article 6 [1] of the CPC RF), when deferring consideration of a case, the appeal court is entitled not to remand it to the first

instance court if it is established that the newly received appeal or appeal recommendation was filed within the term set by Article 321 of the CPC RF (for example, the appeal was sent by post by the time set in Article 321 of the CPC RF but was received by the court after the appeal term had expired) and complies with all the requirements of Article 322 of the CPC RF. In this case, the actions envisaged by Part 1 of Article 325 of the CPC RF are performed by the appeal court.

20. An appellant or a public prosecutor entering an appeal recommendation is entitled to withdraw the appeal or appeal recommendation at any time before the appeal court issues a ruling thereon. An application to withdraw an appeal or appeal recommendation should be filed with the appeal court in writing.

The question of accepting withdrawal of an appeal or appeal recommendation is decided by the appellate court in the court session appointed for considering the appeal or appeal recommendation, during which the authority of the person to withdraw the appeal or appeal recommendation should be verified.

When considering an application to withdraw an appeal or appeal recommendation, the appeal court should take account of the fact that if, in accordance with Article 54 of the CPC RF, the power of attorney expressly specifies the representative's right to appeal against a decision of a first instance court, said representative is also entitled to withdraw an appeal or appeal recommendation filed thereby, unless the power of attorney stipulates otherwise.

An advocate appointed by the court to represent the defendant on the basis of Article 50 of the CPC RF is not entitled to withdraw an appeal filed thereby in the interests of the defendant.

If the appellate court receives an appeal or appeal recommendation withdrawal before considering the appeal or appeal recommendation, in accordance with Articles 14 and 16 of Federal Law dated 22 December 2008 No. 262-FZ "On Access to Information on the Activities of Courts in the Russian Federation", information about withdrawal of the appeal or appeal recommendations should be posted on the appeal court website and in the premises occupied by said court.

An appeal court accepts withdrawal of an appeal or appeal recommendation if it establishes that such withdrawal is both voluntary and fully comprehended.

On the basis of Part 3 of Article 326 of the CPC RF, the appellate court issues a ruling on accepting withdrawal of an appeal or appeal recommendation halting appeals proceedings with respect to the relevant appeal or appeal recommendation.

After appeals proceedings are terminated in connection with withdrawal of the appeal or appeal recommendation, the appealed ruling of the first instance court comes into legal force unless it is appealed to the appellate court by other persons.

Consideration of a case by the appeal court: procedure, timeframes, limits, powers

21. Courts should take into account that, in the sense of Article 327 of the CPC RF, reconsideration of a case in an appeal court presupposes verification and assessment of the actual circumstances of the case and their judicial determination within the scope of the arguments put forward in the appeal or appeal recommendation and that of the claims originally considered by the first instance court.

In accordance with Part 4 of Article 327 [1] of the CPC RF, new substantive law claims that were not considered by the first instance court are not accepted or considered by the appeal court (for example, a claim for moral damages).

At the same time, the limitations envisaged by Part 4 of Article 327 [1] of the CPC RF do not apply to cases when, in accordance with Parts 4 and 5 of Article 330 of the CPC RF, the appellate court transfers to hearing a case according to the rules governing proceedings in a first instance court without taking the specifics envisaged by Chapter 39 of the CPC RF into account.

22. In the meaning of Part 1 of Article 327 of the CPC RF, when an appeal court reconsiders a case according to the rules governing proceedings in a first instance court, including in consideration of the specifics envisaged by Chapter 39 of the CPC RF, the following rules, in particular, apply: on rogatory letters (Article 62 of the CPC RF), on court costs (Chapter 7 of the CPC RF), on judicial summons and letters citatory (Chapter 10 of the CPC RF), on securing a claim (Chapter 13 of the CPC RF), on preparing a case for judicial hearing (Chapter 14 of the CPC RF), on deciding on a petition submitted by case participants (Article 166 of the CPC RF), on deferring consideration of a case (Article 169 of the CPC RF), on investigating and assessing evidence (Chapter 6 and of Article 175–189 of the CPC RF), on announcing a court decision (Article 193 of the CPC RF), on adopting a court decision (Part 2,

3 of Article 194 of the CPC RF), on drawing up a reasoned court decision (Article 199 of the CPC RF), on suspending proceedings on a case (Chapter 17 of the CPC RF) and terminating case proceedings (Chapter 18 of the CPC RF), on leaving a claim without consideration (Parts 2–6 of Article 222 of the CPC RF); and on keeping the minutes (Chapter 21 of the CPC RF).

To draw the attention of courts of the appeals instance to the fact that, by virtue of Part 5 of Article 327 of the CPC RF, during each appeal court session and also on completion of individual procedural actions outside the scope of a court session, minutes are kept according to the rules specified by Chapter 21 of the CPC RF.

At the same time, account should be taken of the fact that, by virtue of Part 6 of Article 327 of the CPC RF, the rules on joining and severance of several claims, changing the subject of or grounds for a claim and the scope of claims, filing a counterclaim, replacing an improper defendant and involvement of third parties in a case do not apply in an appeal court.

Moreover the restrictions envisaged by Part 6 of Article 327 of the CPC RF do not apply to cases when, in accordance with Parts 4 and 5 of Article 330 of the CPC RF, an appeal court transfers to hearing a case according to the rules governing proceedings in a first instance court without taking the specifics envisaged by Chapter 39 of the CPC RF into account.

23. If, when hearing a case in consideration of the specifics envisaged by Chapter 39 of the CPC RF, the appeal court establishes that the first instance court unlawfully dismissed a petition filed in accordance with Article 39 of the CPC RF for a change in the subject of or grounds for the claim or an increase (decrease) in the scope of the claim or considered the claim without taking account of the changes specified in the appeal or appeal recommendation, in accordance with Provision 2, Part 1 of Article 327 and Part 2 of Article 327 [1] of the CPC RF, it hears the case in consideration of the unlawfully dismissed or previously filed but not considered petition for a change in the subject of or grounds for the claim or an increase (decrease) in the scope of the claim, proceeding from the specifics envisaged by Chapter 39 of the CPC RF.

24. In accordance with Parts 1 and 2 of Article 327 [1] of the CPC RF, the appeal court verifies the legality of and justification for only the appealed part of the decision issued by the first instance court,

proceeding from the arguments set forth in the appeal or appeal recommendation and statements of defence thereto.

At the same time, on the basis of Provision 2, Part 2 of Article 327 [1] of the CPC RF, the appeal court is entitled, in the interests of legality, to verify the entire appealed judicial ruling, going beyond the claims set out in the appeal or appeal recommendation and without confining itself to the arguments produced in the appeal or appeal recommendation.

Courts of appeal should proceed from the fact that the interests of legality should, in consideration of the provisions of Article 2 of the CPC RF, be understood as the need to verify that the first instance court lawfully applied the rules of substantive and procedural law for the purposes of protecting violated or disputed rights, freedoms and legitimate interests of participants in civil, labour (official) and other legal relations, as well as for the purposes of protecting the family, parenthood and childhood; social security; the right to housing; healthcare; the right to a favourable environment; the right to education and other human and civil rights and freedoms; the rights and legitimate interests of an unlimited range of persons and public interests and in other cases when protection of law and order is required.

Appellate courts should remember that the interests of legality are not met, in particular, by a first instance court applying the rules of material and procedural law in violation of the rules governing enforcement of laws in terms of time, area and persons covered.

If the appeal court concludes that it is necessary to check the entire appealed first instance ruling, the appeal ruling should, in accordance with Provision 6, Part 2 of Article 329 of the CPC RF, contain the reasoning behind the appellate court’s conclusion.

25. Irrespective of the arguments contained in the appeal or appeal recommendation, during consideration of a case, the appeal court should verify existence of the unconditional grounds specified by Part 4 of Article 330 of the CPC RF for reversing the first instance ruling and the grounds for terminating proceedings on the case (Article 220 of the CPC RF) or leaving the claim without consideration (Parts 2–6 of Article 222 of the CPC RF).

26. Proceeding from the need to observe the appellant's right to a fair trial, as guaranteed by Part 1 of Article 6 of the Convention on Protection of Human Rights and Fundamental Freedoms, the appeal court may not refuse to accept supplements to the appeal or appeal recommendation containing new arguments (considerations) concerning the claims set out in the appeal or appeal recommendation, or additions to the appeal or appeal recommendation containing claims differing from those previously set forth in the appeal or appeal recommendation (such as an appeal against a part of the judicial ruling not previously appealed). However, when accepting such an addition to an appeal or appeal recommendation, the appeal court should, in consideration of the opinion of the case participants and those attending the court session, discuss whether the appeal or appeal recommendation can be heard during the given court session.

27. Should persons duly notified of the time and place when an appeal or appeal recommendation is to be heard not attend the appeal court, the possibility of conducting the judicial proceedings in their absence is decided by the appeal court in consideration of the provisions of Article 167 of the CPC RF.

The appeal court is entitled to consider an appeal or appeal recommendation case in the absence of case participants if, in violation of Part 1 of Article 167 of the CPC RF, such persons do not notify the appeal court of the reasons for their absence and do not produce evidence that these were good reasons or if the court does not recognise the reasons for non-attendance as good ones.

The consequences envisaged by Parts 7 and 8 of Article 222 of the CPC RF of case participants not attending an appeal court do not apply during hearings on an appeal or appeal recommendation case with or without consideration of the specifics envisaged by Chapter 39 of the CPC RF.

28. If an appeal or appeal recommendation refers to additional (new) evidence, proceeding from the requirements of Provision 2, Part 2 of Article 327 of the CPC RF, the judge-rapporteur states the content thereof and raises the question of adopting the additional (new) evidence in consideration of the case participants' opinion.

Should a petition be submitted directly in the appeal court session for adoption and investigation of additional (new) evidence, irrespective of whether the appeal or appeal recommendation made reference thereto, the appeal court reviews the given petition in consideration of the opinion of the

case participants and those present at the court session and gives an assessment (good or otherwise) of the reasons why additional (new) evidence could not have been produced at the first instance court.

At the same time, in consideration of the adversarial principle stipulated by Article 12 of the CPC RF and the provisions of Part 1 of Article 56 of the CPC RF, it is the person referring to the additional (new) evidence that is to prove why it was unable to produce it for the first instance court.

In accordance with Provision 2, Part 2 of Article 327 of the CPC RF, the appeal court accepts additional (new) evidence if it considers the reasons given for not producing such evidence in the first instance courts as good ones.

Such reasons include, in particular: unjustified rejection by the first instance court of petitions from case participants for additional (new) evidence to be requested, attached to the case files or studied or petitions for summoning witnesses, appointing an expert review, or sending a rogatory letter; issue of a court decision dismissing a claim(s) by reason of the statute of limitations or the period set by federal law for entering a motion having been missed, without the other actual circumstances of the case being investigated.

Additional (new) evidence may not be accepted by the appeal court if it is established that the person referring thereto did not produce this evidence at the first instance court since it was conducting itself in bad faith and abusing its procedural rights.

29. If the first instance court incorrectly determined circumstances of significance for the case (Provision 1, Part 1 of Article 330 of the CPC RF), the appeal court should raise for discussion the question of provision by case participants of additional (new) evidence and, if necessary, on the basis of a petition therefrom, assist them in gathering and requesting such evidence.

The appellate court should also suggest that the case participants produce additional (new) evidence if circumstances of significance to the case (Provision 2, Part 1 of Article 330 of the CPC RF) were not provided at the first instance court, including by reason of the burden of proof being distributed incorrectly (Part 2 of Article 56 of the CPC RF).

30. Acceptance of additional (new) evidence in accordance with Provision 2, Part 1 of Article 327 [1] of the CPC RF is formalised by issue of a ruling stating the reasoning behind the appeal court concluding that this evidence could not have been produced in the first instance court for good reason and stating the relevance and permissibility of the given evidence.

In consideration of the provisions of Articles 224–225 of the CPC RF, a ruling on acceptance of additional (new) evidence may be entered either in a retiring room or without retiring thereto, by entering the given ruling in the minutes of the court session.

31. In the meaning of Provision 2, Part 3 of Article 327 of the CPC RF, following the pleadings by the appellant, the public prosecutor that filed the appeal recommendation and other case participants, the appeal court announces the evidence available on the case provided there is a relevant petition to this effect entered by a case participant. In the absence of such a petition, the appeal court may, on its own initiative, announce the evidence available on the case if it needs to be assessed proceeding from the arguments produced in the appeal or appeal recommendation.

The appeal court is entitled dismiss a petition from a case participant to announce the evidence available on the case in consideration of the opinion of the other case participants, the appeal or appeal recommendation arguments, the content of the appealed part of the court decision, and abuse of procedural rights by the petitioner.

Additional (new) evidence is studied in the manner established by Chapter 6 of the CPC RF “Evidence and Proof” and by Articles 175–189 of the CPC RF.

32. If the appellate court establishes in court session the unconditional grounds envisaged by Part 4 of Article 330 of the CPC RF for reversing a first instance court’s decision, on the basis of Part 5 of Article 330 of the CPC RF, it issues a reasoned ruling on transferring to hearing the case according to the rules governing proceedings in a first instance court without taking the specifics envisaged by Chapter 39 of the CPC RF into account, which does not reverse the judicial ruling of the first instance court. Whereat, a ruling on transferring to hearing the case according to the rules governing proceedings in a first instance court without taking the specifics envisaged by Chapter 39 of the CPC RF into account is not subject to appeal.

If, proceeding from the complete and sufficient nature of the evidence gathered on the case and confirming the circumstances of significance thereto, taking into account the opinion of those present at the court session concerning the possibility of continuing to hear the case in this same session, the appeal court recognises the case as being prepared, it is entitled to consider the case, during the same court session, according to the rules governing proceedings in a first instance court, without taking the specifics envisaged by Chapter 39 of the CPC RF into account,

If individual preparatory actions are required (such as summoning of witnesses, provision of assistance to case participants in gathering and requesting evidence, appointment of an expert review, sending of a rogatory letter, and the like), in its ruling on transferring to hearing the case according to the rules governing proceedings in a first instance court without taking the specifics envisaged by Chapter 39 of the CPC RF into account or, in accordance with Article 147 of the CPC RF, in a separate ruling on preparing the case for hearing, the appeal court specifies which actions the case participants should undertake and the relevant timeframe. Depending on the scope, character and duration of the preparatory actions, new court times and dates may be set both in the ruling on transferring to hearing the case according to the rules governing proceedings in a first instance court without taking the specifics envisaged by Chapter 39 of the CPC RF into account or in a separate ruling on scheduling the case hearings.

33. For the purposes of issuing a lawful and justified court ruling on a case when an appeal court transfers, on the basis of Part 5 of Article 330 of the CPC RF, to hearing the case according to the rules governing proceedings in a first instance court without taking the specifics envisaged by Chapter 39 of the CPC RF into account, all relevant and permissible evidence is to be accepted, investigated and assessed, irrespective of why it was not originally produced for the first instance court.

34. In accordance with Parts 1 and 2 of Article 327 [2] of the CPC RF, district, regional and equivalent courts are required to consider an appeal or appeal recommendation within a maximum of two months, and the Supreme Court of the Russian Federation – a maximum of three months from the time the case reaches the appellate court.

The courts attention should be drawn to the fact that, in accordance with Part 3 of Article 327 [2] of the CPC RF, shorter periods for considering appeals and appeal recommendations may be set for

individual categories of case both by the CPC RF and other federal laws (for example, cases on violation of electoral rights and rights to participate in a referendum of citizens of the Russian Federation).

35. If an appeal court transfers, on the basis of Part 5 of Article 330 of the CPC RF, to hearing a case according to the rules governing proceedings in a first instance court without taking the specifics envisaged by Chapter 39 of the CPC RF into account, the case should be heard within the timeframe specified in Article 327 [2] of the CPC RF. The timeframe for an appellate court to consider a case is not subject to prolongation.

36. It should be remembered that if, after considering an appeal or appeal recommendation, an appeal court cancels a first instance court decision on the grounds specified in Part 1 of Article 330 of the CPC RF, the case may not, in accordance with the provisions of Article 328 of the CPC RF, be remanded for reconsideration by the first instance court. In this event, the appeal court itself issues a new decision on the case.

When establishing violations of the rules of procedural law set in Part 4 of Article 330 of the CPC RF, on the basis of Part 5 of Article 330 of the CPC RF, the appeal court transfers to hearing the case according to the rules governing proceedings in a first instance court without taking the specifics envisaged by Chapter 39 of the CPC RF into account.

When applying the provisions of Provision 1, Part 4 of Article 330 of the CPC RF, appeal courts should take account of the fact that a case is recognised as having been considered by an unlawful court if, for example, the case was heard by someone not authorised as a judge; the judge was subject to disqualification on the grounds specified by Provisions 1 and 2, Part 1 and Part 2 of Article 16 of the CPC RF; the judge was again participating in hearing the case, in violation of the provisions of Article 17 of the CPC RF.

37. Violation by a first instance court of the rules of procedural law establishing jurisdiction does not constitute grounds for the appeal court to apply Provision 1, Part 4 of Article 330 of the CPC RF.

Given such violations, in accordance with Article 47 of the Constitution of the Russian Federation and Part 2 of Article 33 of the CPC RF, the appeal court reverses the first instance court ruling on the

grounds of Part 3 of Article 330 of the CPC RF and refers the case to the first instance court under whose jurisdiction it falls by law.

Thus, a case may be transferred to a first instance court by virtue of jurisdiction if violation of the rules of jurisdiction is indicated in the appeal or appeal recommendation and the appeal court establishes that the appellant or the public prosecutor filing the appeal recommendation had petitioned the first instance court with respect to the case not falling under the jurisdiction of the given court or that said person or public prosecutor did not have an opportunity to enter such a petition with the first instance court since they had not been notified of the time and place of the court hearing or had not been involved in the case; if, as a consequence of violation of the rules of exclusive jurisdiction during consideration of cases relating to official secrets or of the rules of exclusive place of jurisdiction with respect to claims relating to rights to real estate, there was no possibility of gathering, studying and assessing, as relevant and permissible evidence, information constituting an official secret or located together with the real estate, respectively, which might have resulted in an incorrect court decision being handed down on the merits.

38. If the appeal court concludes that the decision issued by the first instance court at the preliminary court session (Provision 2, Part 6 of Article 152 of the CPC RF) satisfying a claim(s) is unlawful and (or) unjustified by reason of the statute of limitations or the deadline set by federal law for going to court having been missed, on the basis of Part 1 of Article 330 and Article 328 of the CPC RF, it reverses the given decision. In such a situation, by virtue of the provisions Provision 2, Part 1 of Article 327 of the CPC RF on reconsideration of a case by an appeal court, the case is to be remanded to the first instance court for consideration of the claims on the merits, since the appealed court decision was issued during the preliminary court session without the other actual circumstances of the case being studied or established.

39. It should be kept in mind that, by virtue of Part 6 of Article 330 of the CPC RF, an essentially correct first instance court decision may not be reversed for merely formal considerations (such as violation by the first instance court of the procedure for judicial pleadings, unjustified release of a participant in the case from payment of state duty, and the like). The nature of the violations committed by the first instance court (formal or otherwise) is determined by the appeal court in each

specific case, proceeding from the actual circumstances of the case and the appeal or appeal recommendation arguments.

Formal violations do not include violations of the rules of procedural law envisaged by Provisions 1–3, Part 1 and Part 4 of Article 330 of the CPC RF, or such a violation or incorrect application by the first instance court of the rules of procedural law that resulted or might have resulted in an incorrect court decision (Part 3 of Article 330 of the CPC RF), which is established by the appellate court in each specific case, proceeding from the actual circumstances of the case and the appeal or appeal recommendation arguments.

40. If, during consideration of the case, the appeal court establishes that the appeal or appeal recommendation was filed after the appeal period allotted by Article 321 of the CPC RF had expired and the question of reinstating this period had not been decided, on the basis of Part 4 of Article 328 of the CPC RF, the appeal court issues a ruling on leaving the appeal or appeal recommendation without consideration on the merits.

If, during consideration of a case, an appeal court establishes that the appeal or appeal recommendation does not meet the requirements of Part 3 of Article 322 of the CPC RF and that there is no possibility of eliminating such shortcomings or that the appeal was filed by a person not entitled to appeal a court ruling since the given ruling did not decide on matters relating to its rights or obligations, on the basis of Part 4 of Article 1, Part 4 of Article 222 and Part 4 of Article 328 of the CPC RF, the appeal court issues a ruling on leaving the appeal or appeal recommendation without consideration on the merits.

If, during consideration of a case, an appeal court establishes that the appeal or appeal recommendation was made against a court ruling that is not subject to appeal through an appellate court, on the basis of Part 4 of Article 1 and of Part 4 of Article 328 of the CPC RF, the appeal court issues a ruling on leaving the appeal or appeal recommendation without consideration on the merits.

41. In accordance with Part 1 of Article 329 of the CPC RF, on the basis of the results of hearing an appeal or appeal recommendation, the appeal court issues a decision in the form of an appeal ruling, the requirements on the contents of which are established by Parts 2–4 of Article 329 of the CPC RF.

It should be remembered that, in the sense of the provisions of Part 1 of Article 209 and Part 5 of Article 329 of the CPC RF, an appeal ruling comes into legal force from the day of its adoption, i.e., immediately when the appeal court announces it in the court session.

Announcement in an appeal court session of only the resolutive part of the appeal ruling and deferral of the reasoned appeal ruling by no more than five days (Article 199 of the CPC RF) does not defer the date on which it comes into legal effect. At the same time, with respect to Article 193 of the CPC RF, the presiding judge clarifies in a court session when and in which court the case participants may read the reasoned appeal ruling.

In accordance with Parts 2 and 4 of Article 329 of the CPC RF, the resolutive part of the appeal ruling should contain the conclusions of the appeal court on the results of hearing the appeal or appeal recommendation within the scope of the authority determined by Article 328 of the CPC RF and, if necessary, specify the distribution of court costs, including those incurred in connection with filing the appeal or appeal recommendation.

The resolutive part of an appeal ruling issued on the basis of hearing a case according to the rules governing proceedings in a first instance court without taking the specifics envisaged by Chapter 39 of the CPC RF into account should, by virtue of Part 4 of Article 330 of the CPC RF, stipulate reversal of the judicial ruling of the first instance court, contain the conclusion of the appeal court on the claims (satisfaction or dismissal thereof in full or in part, termination of the case proceedings or leaving of the claim without consideration in full or in part), and specify the distribution of the court costs.

42. If an appeal court has heard a case in consideration of the specifics envisaged by Chapter 39 of the CPC RF and, after issuing the appeal ruling, receives an appeal or appeal recommendation from other persons for whom the lapsed appeal period was reinstated, it accepts such an appeal or appeal recommendation for hearing and considers it in the manner envisaged by Chapter 39 of the CPC RF. If, when considering newly received appeals or appeal recommendations, the appeal court concludes that the judicial ruling of the first instance court was unlawful or unjustified, it is cancelled together with the previously issued appeal ruling and a new appeal ruling is handed down.

If, during consideration of the case, the appeal court transfers, on the basis of Part 5 of Article 330 of the CPC RF, to hearing the case according to the rules governing proceedings in a first instance court

without taking the specifics envisaged by Chapter 39 of the CPC RF into account, persons that were entitled to file an appeal or appeal recommendation but did not appeal against the judicial ruling of the first instance court may apply to the cassation court for protection of their rights and legitimate interests. Appeals or appeal recommendations received from such persons are subject to return by the first instance court on the basis of Provision 2, Part 1 of Article 324 of the CPC RF.

Appealing against rulings of a first instance court

43. In accordance with Provisions 1 and 2, Part 1 of Article 331 of the CPC RF, rulings of a first instance court that can be appealed according to the CPC RF, and those precluding further progress of the case are appealed to the appeal court.

Rulings precluding further progress of a case include, in particular, a ruling refusing to accept a claim for issue of a court order (Article 125 of the CPC RF), a ruling refusing to clarify a court decision (Article 202 of the CPC RF), a ruling terminating proceedings on a case (Article 220 of the CPC RF) and a ruling leaving a claim without consideration (Article 222 of the CPC RF).

Proceeding from the provisions of Part 3 of Article 331 of the CPC RF, rulings that are not subject to appeal in accordance with the CPC RF and that do not preclude further progress of the case may not be appealed separately from the court decision of the first instance. Such rulings include, in particular, rulings accepting a claim(s) for hearing by a first instance court, on preparing a case for hearing, dismissing a petition challenging a judge, on requesting evidence, joining cases in a single set of proceedings, splitting a claim into a separate set of proceedings and those deferring court hearings. At the same time, objections to the given rulings of a first instance court may be included in an appeal or appeal recommendation.

44. In accordance with Part 1 of Article 333 of the CPC RF, a special appeal or appeal recommendation of a public prosecutor against a ruling of a first instance court is filed in accordance with the rules covering filing of appeals or appeal recommendations.

A special appeal or appeal recommendation of a public prosecutor against a ruling of a first instance court may, in accordance with Article 332 of the CPC RF, be filed within fifteen days of the ruling being issued, unless different deadlines or procedure for establishing them are set in the CPC RF.

45. When a special appeal or appeal recommendation of a public prosecutor is entered against a ruling of a first instance court that did not finalise the case proceedings and the case has not yet been resolved on the merits in a first instance court (for example, against a ruling on securing a claim, refusing to produce evidence and the like), for the purposes of ensuring observance of reasonable times for administration of justice (Article 6 [1] of the CPC RF), the materials sent to the appeal court together with the list of all available documents on the case may include ones drawn up with respect to the special appeal or appeal recommendation of a public prosecutor and consisting of the original of the special appeal or appeal recommendation of a public prosecutor and the appealed ruling of the first instance court, as well as copies of documents certified by the first instance court required for consideration purposes.

After the special appeal or appeal recommendation of a public prosecutor against a ruling of a first instance court has been considered, the material drawn up thereon is attached to the relevant civil case files.

46. According to the provisions of Provision 3, Part 2 of Article 331, Part 2 of Article 412, Part 5 of Article 413 and Part 1 of Article 416 of the CPC RF, a special appeal or appeal recommendation of a public prosecutor against a ruling of a first instance court on enforcing or refusing to enforce a decision of a foreign court; recognising or refusing to recognise a foreign court decision; recognising and executing foreign arbitral tribunal (arbitration) awards or refusal to do so is filed with the appeals instance of the supreme court of the republic, territorial or regional court, court of a city of federal significance or court of an autonomous region or autonomous area.

47. The right to file a special appeal against a ruling of a first instance court in accordance with Part 1 of Article 331 of the CPC RF belongs to the case parties and other participants. A public prosecutor participating in a case is entitled to enter an appeal recommendation against a ruling of a first instance court.

Proceeding from the rules of Part 1 of Article 331 and Part 3 of Article 320 of the CPC RF, persons not involved in a case are also entitled to file a special appeal against a ruling of a first instance court. In connection with this, the first instance court should verify whether the special appeal filed by a

person not involved in the case contains justification of violation of its rights and (or) imposition thereon of obligations by the appeal first instance court ruling.

48. In accordance with Part 2 of Article 333 of the CPC RF, the appeal court considers a special appeal or appeal recommendation of a public prosecutor against a ruling of a first instance court without notifying the case participants, in a court session on which mandatory minutes are kept according to the rules specified by Chapter 21 of the CPC RF. In connection with this, when forwarding a case (materials) with the special appeal or appeal recommendation of a public prosecutor to the appeal court, in the accompanying letter, a copy of which is also sent to the case participants, the first instance court should specify that the special appeal or appeal recommendation of a public prosecutor is to be considered by an appeal court session without the case participants being notified or summoned.

At the same time, in consideration of the nature and complexity of this procedural question, as well as the arguments put forward in the special appeal or appeal recommendation of a public prosecutor, the appeal court is entitled, on its own initiative, to summon case participants to the court session.

Case participants must be notified of the time and place of a court session considering a special appeal or appeal recommendation of a public prosecutor against a ruling on suspending or terminating case proceedings, or leaving a claim without consideration (Part 2 of Article 333 of the CPC RF).

The attention of courts should be drawn to the fact that, in accordance with Articles 14 and 16 of Federal Law dated 22 December 2008 No. 262-FZ "On Access to Information on the Activities of Courts in the Russian Federation", information on the time and place of the hearings on a special appeal or appeal recommendation of a public prosecutor against a ruling of a first instance court should be posted on the appeal court website and in the premises occupied by the appeal court, irrespective of how the special appeal or appeal recommendation of a public prosecutor is considered (with or without notification of the case participants).

49. Proceeding from the provisions of Part 1 of Article 333 of the CPC RF, when verifying the legality of and justification for an appealed ruling of a first instance court, the appeal court is governed by Article 330 of the CPC RF, which specifies the grounds for cancelling or amending a first instance court decision.

50. If, proceeding from the requirements of the CPC RF, the appealed court ruling should have been handed down by a first instance court in a court session of which the case participants had been notified (for example, rulings on enforcement of a foreign court decision, clarification of a court decision, indexation of awarded funds and the like), should the appeal court transfer, on the basis of Part 5 of Article 330 of the CPC RF, to hearing the special appeal or appeal recommendation of a public prosecutor according to the rules governing proceedings in a first instance court without taking the specifics envisaged by Chapter 39 of the CPC RF into account, it notifies the case participants of the time and place of the hearings on the special appeal or appeal recommendation of a public prosecutor.

51. In accordance with Article 333 of the CPC RF, a special appeal or appeal recommendation of a public prosecutor against a ruling of a first instance court is considered during the period established by Article 327 [2] of the CPC RF. Whereat shortened terms for considering a special appeal of appeal recommendation of a public prosecutor against a ruling of a first instance court may be set for individual categories of case both by the CPC RF and other federal laws.

52. If, after the special appeal or appeal recommendation of a public prosecutor is considered by the appeal court, the ruling of the first instance court is repealed in full or in part on the grounds specified Article 330 of the CPC RF, in accordance with the requirements of Part 2 of Article 334 of the CPC RF, it is not permitted to refer the procedural matter on which the appealed ruling was issued for reconsideration. In this case, the appeal court itself decides on the merits the specific procedural matter on which the appealed court ruling was issued (for example, the question of the legality or illegality of reinstating or refusing to reinstate a procedural term; returning, leaving without consideration or refusing to accept a claim; applying interim relief; terminating case proceedings and the like).

If the first instance court did not decide the case on the merits of the claims and if the appealed court ruling adopted after a statement of claim has been accepted for hearing by a first instance court is cancelled (for example, a ruling on securing a claim, terminating case proceedings, leaving a claim without consideration and the like), the appeal court decides the procedural issue with respect to the special appeal or appeal recommendation of a public prosecutor and remands the civil case to the first instance court for further consideration on the merits.

53. If, during consideration of a special appeal or appeal recommendation of a public prosecutor against a ruling of a first instance court, it is established that the special appeal or appeal recommendation of a public prosecutor was filed after the appeal period established Article 332 of the CPC RF had elapsed and the question of reinstating this period was not decided, on the basis of Part 4 of Article 1 and Part 4 of Article 328 of the CPC RF, the appeal court issues a ruling leaving the special appeal or appeal recommendation of a public prosecutor without consideration on the merits.

Other questions arising in connection with consideration of a case in an appeal court

54. Proceeding from the provisions of Part 5 of Article 327 of the CPC RF, comments on the minutes of an appeal court session are considered by the presiding judge that signed them, according to the rules specified Article 232 of the CPC RF.

55. Failure by a party to pay the state duty or pay it in part may not serve as grounds for the appeal court to remand the appeal and case to the first instance court for performance of the procedural actions envisaged by Article 323 of the CPC RF. In this event, the question of recovering state duty in the amount established by law may be decided by the appeal court in consideration of the rules of Article 98 of the CPC RF, this being stated in the appeal ruling.

If the appeal court amends an existing judicial ruling of the first instance court or reverses it or adopts a new decision on the case, it is entitled to alter the distribution of court costs. If the appeal court does not change the distribution of court costs, then, in accordance with Part 3 of Article 98 of the CPC RF, this question may be decided by the first instance court on the basis of an application by an interested party.

56. Guided by Part 2 of Article 200 of the CPC RF, the appeal court is entitled, on its own initiative or on the basis of an application from case participants, to correct misprints and obvious arithmetical errors in an appeal ruling and to consider an application from case participants for clarification of an appeal ruling reversing a decision of a first instance court or issuing a new decision (Article 202 of the CPC RF), and for review of the appeal ruling on the basis of newly discovered or new circumstances (Chapter 42 of the CPC RF).

The attention of appeal courts should be drawn to the fact that, proceeding from the requirements of Articles 200, 202 and 396 of the CPC RF, applications for correction of misprints or obvious arithmetical errors or clarification of an appeal ruling reversing a decision of a first instance court or issuing a new decision, as well as an appeal or appeal recommendation for review of an appeal ruling on the basis of newly discovered or new circumstances, are considered by an appeal court session of which the case participants are notified.

Appeal court rulings on correction of misprints or obvious arithmetical errors, on satisfying or dismissing an application for clarification of an appeal ruling reversing a decision of a first instance court or issuing a new decision, as well as on satisfaction or dismissal of an appeal or appeal recommendation for review of an appeal ruling on the basis of newly discovered or new circumstances in accordance with Part 5 of Article 329 of the CPC RF come into legal effect at the time they are adopted. In connection with this, the given rulings of an appeal court are subject only to cassation appeal, since the appeal court is not entitled to consider appeals against court rulings that have come into legal effect.

57. Given the circumstances envisaged by Provisions 1 and 2, Part 1 of Article 201 of the CPC RF, the appeal court is entitled, on its own initiative or on the basis of an application from case participants, to issue an additional appeal ruling in a court session of which the case participants must be notified. Whereat the additional appeal ruling may be issued no later than the deadline set by law for entering a cassation appeal against an appeal ruling, i.e., within six months of the appeal ruling being issued.

58. In the meaning of Article 428 of the CPC RF, after consideration of the case in the appeal court, including according to the rules governing proceedings in a first instance court without the specifics envisaged by Chapter 39 of the CPC RF being taken into account, a writ of execution is issued by the court that considered the case in the first instance.

59. If, during consideration of a case, the appeal court establishes that the first instance court did not prepare the case for hearing or such preparations were incomplete or other violations were committed that entailed incorrect consideration of the case or violation of the time periods for such consideration, the appeal court must respond to such violations by issuing a special ruling (Article 226 of the CPC RF).

60. In connection with adoption of this ruling, to recognise as vitiated ruling of the Plenary Session of the Supreme Court of the Russian Federation of 24 June 2008 No. 12 “On Application by Courts of the Rules of the Civil Procedure Code of the Russian Federation Regulating Cassation Court Proceedings”.

Ruling of the Plenary Session of the Supreme Court of the Russian Federation of 11 December 2012 No. 29 Moscow "On Application by Courts of the Rules of the Civil Procedural Legislation Regulating Cassation Court Proceedings"

The Federal Law of 9 December 2010 No. 353-FZ "On Amending the Civil Procedure Code of the Russian Federation" introduces amendments into Chapter 41 of the Civil Procedure Code of the Russian Federation.

In connection with questions arising for courts in applying the rules of Chapter 41 of the CPC RF regulating cassation court review of judicial rulings that have acquired binding force, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation and by Articles 9 and 14 of the Federal Constitutional Law of 7 February 2011 No. 1-FKZ "On Courts of General Jurisdiction in the Russian Federation" resolves to provide courts with the following clarifications:

1. Cassation court proceedings are intended to correct material violations of the rules of substantive law, or the rules of procedural law committed by courts during previous hearings on the case and affecting the outcome of the case, and without elimination of which violated rights ,legitimate interests and public interests protected by law cannot be restored and protected.

When considering a cassation appeal or cassation recommendation, the cassation court verifies only the legality of the judicial rulings, i.e., that the rules of substantive law and the rules of procedural law have been correctly applied and interpreted (Part 2 of Article 390 of the CPC RF).

2. In accordance with Part 1 of Article 376 and Part 2 of Article 377 of the CPC RF, the following may be appealed through the cassation court, once they have acquired binding force:

first instance decisions and rulings of district courts, military garrison courts, magistrates, court orders;

decisions and rulings of higher courts of republics, territorial and regional courts, military district (naval) courts, courts of cities of federal significance, courts of an autonomous region or autonomous areas (hereinafter regional and equivalent courts), adopted at the first instance on cases on awarding

compensation for violation of the right to a trial within a reasonable time (Articles 2449 and 24410 of the CPC RF);

appeal rulings issued by courts after considering appeal, special appeal and appeal recommendation cases, with the exception of appeal rulings of the Supreme Court of the Russian Federation (Provisions 4–5 Part 2 of Article 3911 of the CPC RF);

rulings issued by appeal courts specified in Parts 1 and 2 of Article 3201 of the CPC RF on leaving appeals or appeal recommendations without consideration on the merits, on the basis of Part 4 of Article 328 of the CPC RF and other rulings;

rulings of presidia of regional and equivalent courts.

3. Courts should bear in mind that judicial rulings that have acquired binding force may be appealed to a cassation court provided the persons specified in Part 1 of Article 376 of the CPC RF have exhausted the other means established by the Civil Procedure Code of the Russian Federation for appealing against a judicial ruling before it acquires binding force (Part 2 of Article 376 of the CPC RF).

Other means for appealing against a first instance court ruling should, in the given case, be understood as appealing against it through the appeal court. At which point the other means of appeal are recognised as exhausted if the case has been considered by the appeal court on the merits and an appeal ruling issued.

Courts should also consider that the Civil Procedure Code of the Russian Federation does not provide for appealing certain judicial acts through an appeal court, though they may be appealed through a cassation court. For instance, a court order is subject to cassation appeal (Provision 1, Part 2 of Article 377 of the CPC RF).

4. The right to lodge a cassation appeal is enjoyed by the case participants, as well as other persons whose rights and legitimate interests have been violated by the judicial ruling, specifically those not involved in the case in first instance and appeal courts, if the judicial ruling has decided a matter relating to their rights or obligations (Provision 4, Part 4 of Article 330, Part 1 of Article 376 of the CPC RF).

If an appeal court has verified the legality of and justification for a judicial ruling of the first instance court and issued an appeal ruling, judicial rulings on the case are subject to cassation appeal not only by the person who entered the appeal (appeal recommendation) considered by the appeal court, but also by other case participants that did not file the appeal, as well as persons not involved in the first instance and appeal case, if judicial rulings that have acquired binding force decided a matter relating to their rights or obligations.

If a judicial ruling has decided a matter relating to the rights or obligations of persons not involved in the case, the latter are not deprived of the possibility of filing a cassation appeal with the cassation court. This is the case even if the first instance ruling court was not appealed through the appeal court and has acquired binding force.

5. The Public Prosecutor General of the Russian Federation and his deputies, a public prosecutor of a republic, territory, region, city of federal significance, autonomous region or area, or military district (fleet) is entitled to file a cassation recommendation, if the case was initiated on the basis of an application by a public prosecutor issued in protection of the rights, freedoms and legitimate interests of individuals, an unlimited group of persons or the interests of the Russian Federation, constituent entities of the Russian Federation or municipalities, or a public prosecutor spoke during the proceedings to provide conclusions on the case when this is provided for by the Civil Procedure Code of the Russian Federation and other federal laws (Articles 34, 35 and 45, Part 3 of Article 376, Part 3 of Article 377 of the CPC RF). Whereat the right to file a cassation recommendation does not depend on actual participation by the public prosecutor in the first instance and (or) appeal court session.

A cassation recommendation may also be entered by the given persons if the public prosecutor was not summoned by the first instance and appeal courts to participate in a case in which his participation is mandatory by virtue of federal law (Part 3 of Article 45 of the CPC RF).

Courts should also bear in mind that a cassation recommendation may be filed by a public prosecutor in the interests of persons not involved in the case if the judicial rulings decide a matter relating to their rights or obligations. The need to file a cassation recommendation in protection of the rights, freedoms and legitimate interests of the given persons should be reasoned by the public prosecutor with reference to the requirements of Part 1 of Article 45 of the CPC RF.

6. If a cassation appeal or cassation recommendation is filed by a person not entitled to apply to the cassation court (for example, a person not participating in the case and in relation to which the judicial ruling does not decide a matter relating to its rights and obligations), it is subject to return on the basis of Provision 2, Part 1 of Article 3791 of the CPC RF.

7. A cassation appeal or cassation recommendation is filed directly with the cassation court that, in accordance with its competence, is authorised to consider it (Article 377 of the CPC RF).

Whereat a cassation appeal or cassation recommendation against decisions and rulings of magistrates, court orders, or appeal rulings of district courts that have acquired binding force may be filed with the Judicial Division for administrative cases, the Judicial Division for civil cases or the Military Division of the Supreme Court of the Russian Federation, if, as a result of the given judicial rulings being appealed through the cassation court, the presidium of a regional or equivalent court has issued a ruling of the presidium (Provisions 3 and 4, Part 2 of Article 377 of the CPC RF).

If a cassation appeal or cassation recommendation is filed in violation of the jurisdiction rules established by Article 377 of the CPC RF, it is subject to return on the basis of Provision 5, Part 1 of Article 3791 of the CPC RF.

8. Proceeding from the provisions of Part 2 of Article 376, Provision 3, Part 1 of Article 3791, Article 382, and Provision 6, Part 1 of Article 390 of the CPC RF, the six month period for filing a cassation appeal against judicial rulings that have acquired binding force applies to all cassation appeals against judicial rulings and filings of a cassation appeal or cassation recommendation with the Judicial Division for administrative cases, the Judicial Division for civil cases or the Military Division of the Supreme Court of the Russian Federation after a judicial ruling has been appealed to the presidium, a regional or equivalent court does not mean that said period will start running anew.

The given six-month period runs from the day following adoption of an appeal ruling until the corresponding day of the last month of the given period (Part 3 of Article 107, Part 5 of Article 329, Article 335 of the CPC RF). Announcement in an appeal court session only of the resolutive part of the appeal ruling and deferral of the reasoned appeal ruling by no more than five days (Article 199 of the CPC RF) does not defer the date on which it acquires binding force.

If, after issuing the appeal ruling, the appeal court considers appeals or appeal recommendations from other persons for which the period for entering appeals or appeal recommendations was reinstated, the six-month period for appealing against judicial rulings that have acquired binding force should run from the day following adoption of the last appeal ruling.

Should an appeal court issue an additional appeal ruling (Part 4 of Article 1, Article 201 of the CPC RF), the six-month period of a cassation appeal against the main appeal ruling and the additional appeal ruling runs from the day on which the additional appeal ruling is issued.

At the same time, if the appeal court dismisses a claim for issue of an additional appeal ruling, the period for entering a cassation appeal runs from the day following that on which the main appeal ruling is issued.

The deadline for filing cassation appeals or cassation recommendations is not considered to have been missed if they were handed over to a postal organisation before midnight on the last day of the allotted period (Part 3 of Article 108 of the CPC RF). In this case, the filing date of the cassation appeal or cassation recommendation is determined from the stamp on the envelope, the receipt for acceptance of recorded correspondence or another document confirming acceptance thereof (post office statement, copy of the postal correspondence dispatch register, and the like).

When calculating the six-month period, it should be borne in mind that the time for considering a cassation appeal or cassation recommendation in cassation court is not taken into account.

At the same time, if a cassation appeal or cassation recommendation has been returned without consideration on the grounds specified by Article 3791 of the CPC RF, the time during which the question of returning the appeal or appeal recommendation is not excluded from the six-month period.

9. For the purposes of the cassation court deciding correctly whether the period for filing a cassation appeal or cassation recommendation has been observed, to draw the attention of regional and equivalent courts to the need to specify, in rulings (resolutions) issued after consideration of a cassation appeal or cassation recommendation, the date on which it was received by the cassation court.

10. By virtue of Provision 3, Part 1 of Article 3791 of the CPC RF, a cassation appeal or cassation recommendation filed after expiry of the six-month period is subject to return without consideration on the merits, unless an effective court ruling reinstating this period was attached thereto.

In accordance with Part 4 of Article 112 of the CPC RF, an application by persons specified in Part 1 of Article 376 of the CPC RF for reinstatement of a missed procedural period set by Part 2 of Article 376 of the CPC RF is submitted to the first instance court that considered the case.

Proceeding from the provisions of Part 4 of Article 112 of the CPC RF, this period may be reinstated on the basis of an application from an individual or a legal entity and only in exceptional cases, when the court recognises as good the reasons for missing it owing to circumstances objectively excluding the possibility of filing the cassation appeal by the set deadline.

In relation to individuals participating in a case, such circumstances, in particular, may include serious illness, incapacity and other personal circumstances of the appellant, as well as other circumstances not dependent thereon, by virtue of which he was unable to file a cassation appeal on time.

However, if a legal entity misses the cassation appeal deadline because the organisation's representative is on a business trip or vacation, the CEO is replaced or is on a business trip or vacation, there is no corporate lawyer, and the like, these reasons may not be recognised as good reasons.

When considering a claim for reinstatement of the period for filing a cassation appeal or cassation recommendation, the court is not entitled to enter into a discussion regarding the legality of the judicial rulings in relation to which the application for reinstatement of the appeal term is entered but should study the arguments relating to whether or not there were good reasons for missing the procedural term.

Whereat it should be kept in mind that an application for reinstatement of a term may be satisfied if there were circumstances objectively precluding the possibility of filing a cassation appeal or cassation recommendation within a year of the appealed judicial ruling acquiring binding force (Part 4 of Article 112 of the CPC RF).

Circumstances associated with missing the deadline for a cassation appeal that arise after the one-year period are of no legal significance and are not subject to verification. In this case, the court dismisses the application for reinstatement of the period for filing a cassation appeal or cassation recommendation without checking on the given circumstances.

In its ruling reinstating or refusing to reinstate the period for filing a cassation appeal or cassation recommendation, the court should set out the reasoning for its decision.

A special appeal may be entered against a court ruling reinstating or refusing to reinstate a missed procedural term and is subject to consideration by the relevant appeal court (Part 5 of Article 112, Part 2 of Article 331 of the CPC RF).

If a cassation appeal or cassation recommendation is filed more than six months after a court ruling reinstating the period for filing a cassation appeal or cassation recommendation acquires binding force, it is returned without consideration on the merits on the basis of Provision 3, Part 1 of Article 3791 of the CPC RF.

11. If the cassation appeal or cassation recommendation contains no request for cancellation or amendment of judicial rulings or other requests that should comply with the authority of the cassation court established by Part 1 of Article 390 of the CPC RF, this constitutes grounds for returning the cassation appeal or cassation recommendation without consideration on the merits (Provision 7, Part 1 of Article 378, Provision 1, Part 1 of Article 3791 of the CPC RF).

12. When deciding on whether the cassation appellant observed the requirement to pay state duty in cases established by law, the manner and amount, courts should, in particular, be guided by Provision 9 of Part 1 of Article 33319 of the Tax Code of the Russian Federation (hereinafter the TC RF).

Proceeding from the content of Part 7 of Article 378 of the CPC RF, questions on reducing the state duty or permitting its payment in instalments (deferral) (Part 2 of Article 33320, Article 33341 of the TC RF) are subject to consideration by the first instance court irrespective of which judicial ruling is under cassation appeal (for example, an appeal ruling of a regional court). A ruling issued by a first instance court on such matters may be appealed through an appeal court by virtue of Article 104 of the CPC RF.

If a cassation appeal is filed without a document being attached that confirms payment of state duty in the required amount, or one that confirms benefits relating to payment of such duty, or a court ruling reducing the state duty or granting permission to pay it in instalments (payment deferral), such an appeal may not be accepted for consideration by the cassation court and, by virtue of Provision 1, Part 1 of Article 3791 of the CPC RF, is subject to return for failing to meet the requirements of Part 7 of Article 378 of the CPC RF.

13. If a cassation appeal is returned, the state duty is subject to return to the person that paid it, on the basis of a, application submitted thereby to the tax authority (Provision 2 of Part 1 of Article 33340, Part 3 of Article 33340 of the TC RF).

If state duty for the initially filed cassation appeal was not returned, the relevant sum is to be offset by the cassation court if a second appeal is filed by the same person to the cassation court, provided the initial state duty payment document is attached thereto (Provision 2 of Part 1 of Article 33340 of the TC RF).

14. If there are grounds for returning a cassation appeal or cassation recommendation without consideration on the merits, this should be carried out within ten days of its receipt by the cassation court (Part 2 of Article 3791 of the CPC RF).

If grounds for returning a cassation appeal or cassation recommendation envisaged by Part 1 of Article 3791 of the CPC RF are discovered by the cassation court when considering the appeal or appeal recommendation during a court session, the cassation court should issue a ruling on leaving the cassation appeal or cassation recommendation without consideration on the merits (Provision 6, Part 1 of Article 390 of the CPC RF).

After the impediments serving as grounds for returning an appeal or appeal recommendation, or for leaving it without consideration on the merits are eliminated, the appellant is entitled to file the cassation appeal or cassation recommendation again, in consideration with the period set by Part 2 of Article 376 of the CPC RF.

15. A cassation appeal or cassation recommendation filed in accordance with the rules established by Articles 376–378 of the CPC RF is studied by the judges specified in Article 3801 of the CPC RF on the basis of the materials attached thereto or the materials of the evoked case.

For the purposes of observing reasonable times for administration of justice (Article 61 of the CPC RF), a judicial request to evoke a case is subject to immediate execution by the court.

16. In the event of a case being evoked, the judge is entitled to suspend execution of the court decision until the cassation proceedings are completed only if the relevant cassation appeal or cassation recommendation contains such a request or there is another such petition (Part 1 of Article 381 of the CPC RF).

Whereat the question of suspending execution of a judicial ruling appealed through the cassation court may, depending on when the given request is received, be decided by the judge either in conjunction with the evoked or after it is evoked, but before the cassation proceedings are completed.

To draw the attention of courts to the possibility of suspending execution only of judicial rulings in relation to which a cassation appeal or cassation recommendation has been filed.

A ruling issued by a judge on suspending execution of the court decision is not subject to appeal (Part 1 of Article 381 of the CPC RF).

If execution of a court decision has been suspended and, after the arguments of the cassation appeal or cassation recommendation have been studied with respect to the case materials, the judge issues a ruling refusing to transfer the appeal or appeal recommendation for consideration in a cassation court session, the resolutive part of the judicial ruling will decide whether the suspended execution of the court decision is cancelled. If, however, the judge issues a ruling on handing over a cassation appeal or cassation recommendation with the case for consideration in a court session, cancellation of suspended execution of the court decision is specified in the resolutive part of the cassation court ruling (resolution) issued during the court session.

A decision on the question of cancelling suspended execution of a court decision is not excluded, either by issue of a separate judicial ruling and, if a cassation appeal or cassation recommendation with

the case has been considered by a cassation court session, of a separate cassation court ruling (resolution).

17. Within the time periods established by Article 382 of the CPC RF, on the results of studying the cassation appeal or cassation recommendation arguments, with respect to the materials attached to such appeals/recommendation or the materials of an evoked case, the judge issues a ruling refusing to hand over a cassation appeal or cassation recommendation for consideration by a cassation court session, if he concludes that there are none of the grounds envisaged by Article 387 of the CPC RF for cancelling or amending the judicial rulings under cassational procedure (Provision 1, Part 2 of Article 381 of the CPC RF).

Judicial rulings should meet the requirements specified by Article 383 of the CPC RF, including that for mandatory indication of the reasons for refusing to hand over a cassation appeal or cassation recommendation for consideration in a cassation court session.

18. Regional and equivalent courts should bear in mind that appeals and appeal recommendations submitted to the presidium of a regional or equivalent court by persons previously refused an application for a cassation appeal or cassation recommendation to be handed over for consideration in a cassation court session are subject to return without consideration on the merits on the basis of Provision 5, Part 1 of Article 3791 of the CPC RF.

19. If, when studying the cassation appeal or cassation recommendation arguments with respect to the case materials, the judge concludes that there are grounds for handing over the cassation appeal or cassation recommendation with the case for consideration in a cassation court session, he issues a ruling on handing over the cassation appeal or cassation recommendation with the case for consideration in a cassation court session (Provision 2, Part 2 of Article 381, Article 384 of the CPC RF).

The judicial ruling should specify which appeal or appeal recommendation arguments deserve attention when the cassation appeal or cassation recommendation is considered, with the case, in a cassation court session.

20. The Civil Procedure Code of the Russian Federation does not provide for the possibility of a person filing supplements to a cassation appeal if a judicial ruling has been issued with respect to said appeal on handing it over, with the case, for consideration in a cassation court session.

At the same time, proceeding from the need to observe the appellant's right to a fair trial, as guaranteed by Paragraph 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, should a person on whose cassation appeal a judicial ruling has been issued when handing it over, with the case, for consideration in a cassation court session and a court session has been scheduled, file supplements to the cassation appeal, will be attached by the court to the previously filed cassation appeal. Proceeding from the additional arguments concerning the essence of the material violations committed by the court of the rules of substantive or procedural law and resulting in a judicial error, the cassation court decides whether there is a need to send copies of the submitted supplements to the court participants, and to defer consideration of the cassation appeal with the case in court session and to set a new time and date for the court session.

21. In accordance with the provisions of Article 385 of the CPC RF, the cassation court to which the case is transferred for consideration in a court session:

sends the case participants copies of the judicial ruling on handing over a cassation appeal or cassation recommendation with the case for consideration in a cassation court session and copies of the cassation appeal or cassation recommendation;

appoints the time for hearing the case so that the case participants are able to attend the court session and notifies them of the time and place when the cassation appeal or cassation recommendation with the case will be heard, including by SMS provided dispatch of the SMS and its delivery to the addresses are registered.

22. A cassation appeal or cassation recommendation is considered with the case in a cassation court session by the time and in the manner established by Article 386 of the CPC RF.

Whereat the period for consideration of a cassation appeal or cassation recommendation with the case in a cassation court session runs from the day when the judges issue the ruling on handing over a

cassation appeal or cassation recommendation, with the case, for hearing in a cassation court session and is not subject to prolongation.

23. Courts should bear in mind that non-attendance by case participants who have been duly notified of the time and place of the hearings on a cassation appeal or cassation recommendation, with the case, in a cassation court session, is not an impediment to the case being considered by the cassation court (Part 2 of Article 385 of the CPC RF).

If, before the court retires to decide on a cassation appeal or cassation recommendation, the persons specified in Part 1 of Article 376 of the CPC RF and duly notified of the time and place of the hearings on a cassation appeal or cassation recommendation, delivers a request that is received by the court for the court session to be deferred in connection with impossibility of participating therein for good reasons and evidence is produced that these are, indeed, good reasons, the court defers consideration of the cassation appeal or cassation recommendation, with the case, if it recognises the reasons for non-attendance as goods ones (Part 2 of Article 167 of the CPC RF).

A ruling on deferring a court session is issued by the presidium of a regional or equivalent court, or a relevant ruling by a Judicial Division for administrative cases, the Judicial Division for civil cases or the Military Division of the Supreme Court of the Russian Federation. If the cassation court keeps minutes of the court session, the ruling (resolution) on deferring it may be entered in the minutes (Part 4 of Article 1, Part 2 of Article 224 of the CPC RF).

24. When considering a cassation appeal or cassation recommendation, with the case, the cassation court is not entitled to establish or deem proven circumstances that were not established or were rejected by the first instance or appeal court, to predetermine questions of the reliability or truth of any evidence, the priority of some evidence over the other, or to study new evidence (Part 2 of Article 390 of the CPC RF). At the same time, if the cassation court establishes that the first and (or) appeal court committed violations of the rules of procedural law when studying and assessing evidence, which entailed a judicial error of a substantive and irreversible nature (for example, a judicial ruling in violation of the requirements of Article 60 of the CPC RF based on impermissible evidence), the court is required to consider these circumstances when issuing the cassation ruling (resolution).

25. The cassation court verifies the legality only of the judicial rulings against which an appeal has been entered and only in the relevant part (Part 2 of Article 390 of the CPC RF). However, if the appeal part of a decision is conditioned by another part thereof or another judicial ruling issued on the same case, against which the appellant has not appealed, this part of the decision or the judicial ruling is also subject to verification by the cassation court.

The legality of an appealed judicial ruling is verified within the scope of the cassation appeal or cassation recommendation arguments. At the same time, it should be kept in mind that the court is not bound by the arguments set out in the cassation appeal or cassation recommendation, if it concludes that, in the interests of legality, it is necessary to go beyond the scope of these arguments.

A ruling or resolution issued by a cassation court after considering a cassation appeal or cassation recommendation, with the case, should indicate the reasons why the cassation court went beyond the scope of the arguments contained in the cassation appeal or cassation recommendation (Provision 8, Part 1 of Article 388 of the CPC RF).

26. Courts should bear in mind that newly discovered or new circumstances referred to by persons specified in Part 1 of Article 376 of the CPC RF in a cassation appeal or cassation recommendation may not serve as grounds for reversing or amending a judicial ruling under cassational procedure.

A judicial ruling may be reviewed on the basis of such circumstances in the manner established by Chapter 42 of the CPC RF.

27. If a first instance and (or) appeal court commits an error in applying and (or) interpreting rules of substantive law and this does not, for being remedied after reversal (amendment) of the judicial ruling, require establishment of new case circumstances, submission, investigation and assessment of evidence, the cassation court should pass a new judicial ruling (ruling), without remanding the case for re-consideration by the first instance or appeal court (Provision 5, Part 1 of Article 390 of the CPC RF).

28. Considering that, in accordance with Part 9 of Article 386 of the CPC RF, issue of cassation rulings, resolutions and their announcement follow the rules specified by Articles 194 and 193 of the CPC RF, respectively, by virtue of the provisions of Part 2 of Article 193 of the CPC RF, the cassation

court is entitled to announce in a court session only the resolutive part of its ruling or resolution and explain when and where the case participants and their representatives may familiarise themselves with the reasoned judicial ruling..

An announced resolutive part of a cassation ruling or resolution should be attached to the case.

29. In the meaning of Article 428 of the CPC RF, after consideration of the case in cassation court, including if said court reversed or amended a ruling of a first instance, appeal or cassation court and adopted a new judicial ruling, a writ of execution is issued by the court that heard the case in the first instance.

30. To recognise as vitiated ruling of the Plenary Session of the Supreme Court of the Russian Federation of 12 February 2008 No. 2 "On Application of the Rules of the Civil Procedural Legislation in a Court of the Supervisory Instance in Connection with Adoption and Introduction into Effect of Federal Law dated 4 December 2007 No. 330-FZ 'On Amending the Civil Procedure Code of the Russian Federation'".

Ruling of the Plenary Session of the Supreme Court of the Russian Federation of 11 December 2012 No. 31 Moscow "On Application of the Rules of the Civil Procedure Code of the Russian Federation When Courts Consider Applications and Recommendations for Re-Examination of Judgements That Have Come into Legal Force on the Basis of Newly Discovered or New Circumstances"

In connection with questions arising before courts when applying the rules of Chapter 42 of the Civil Procedure Code of the Russian Federation (hereinafter the CPC RF) on re-examining judgements that have come into legal force on the basis of newly discovered or new circumstances, as well as for the purposes of ensuring correct application of the legislation and unified court practice, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, by Articles 9 and 14 of the Federal Constitutional Law of 7 February 2011 No. 1-FKZ "On Courts of General Jurisdiction in the Russian Federation", resolves to provide courts with the following clarifications:

1. Decisions of first instance courts, rulings of appeal courts, rulings and resolutions of cassation courts, and rulings of the Presidium of the Supreme Court of the Russian Federation that have come into legal effect may be reviewed on the basis of newly discovered or new circumstances by the issuing court.

Proceeding from the provisions of Provision 2, Part 1 of Article 331 of the CPC RF, rulings of the given courts not deciding a case on the merits may be reviewed if they exclude the possibility of further progress of the case (Part 4 of Article 1 of the CPC RF).

Appeal and cassation courts, as well as the Presidium of the Supreme Court of the Russian Federation, are entitled, in accordance with Article 393 of the CPC RF, to re-examine rulings they have issued on the basis of the circumstances specified above; if these rulings amended a ruling of a lower instance court or a new ruling was issued.

2. An application or recommendation for re-examination of judgements that have come into legal force in the manner of Chapter 42 of the CPC RF may be filed by case participants and other persons whose rights and obligations are affected by the given judgements.

Since, in accordance with Article 44 of the CPC RF, legal succession is permitted at any stage of civil proceedings, procedural successors of case participants also enjoy, in cases established by law, the right to apply for re-examination of judgements on the basis of newly discovered or new circumstances.

A public prosecutor is entitled to enter with a court a recommendation for re-examination of a judgement that has come into legal force on the basis of newly discovered or new circumstances, if the case was initiated by application of a public prosecutor, filed in protection of the rights and legitimate interests of individuals, an indeterminate group of persons or the interests of the Russian Federation, constituent entities of the Russian Federation or municipalities (Part 1 of Article 45, Article 394 of the CPC RF), or if a public prosecutor spoke during the proceedings to provide conclusions on the case, if this was envisaged by the CPC RF and other federal laws (Part 3 of Article 45 of the CPC RF). Whereat a public prosecutor's right to file such a recommendation does not depend on actual participation by the public prosecutor in sessions of courts of the relevant instances.

A public prosecutor is also entitled to apply to court for re-examination of judgements in the manner of Chapter 42 of the CPC RF in the interests of individuals, an indeterminate group of persons or the interests of the Russian Federation, constituent entities of the Russian Federation or municipalities not involved by the court to participate in the case, if the judgements decide a matter relating to the rights and obligations of these persons, with reference to Part 1 of Article 45 of the CPC RF (Part 4 of Article 1 of the CPC RF).

3. An application or recommendation for re-examination of judgements that have come into legal force on the basis of newly discovered or new circumstances should contain the name of the court with which the application or recommendation is filed and the name of the person applying to the court and the names of the case participants. It should alsospecify the circumstances that might entail re-examination of the judgement and refer to the evidence confirming these circumstances.

When an application or recommendation is submitted to an appeal or cassation court or the Presidium of the Supreme Court of the Russian Federation, copies, certified by the relevant court, of the judgements adopted on the case are attached thereto with reference to Part 5 of Article 378, Part 4 of Article 3913 of the CPC RF (Part 4 of Article 1 of the CPC RF).

A public prosecutor's recommendation for re-examination of judgements that have come into legal force on the basis of newly discovered or new circumstances in the interests persons not involved in the case should be substantiated with reference to the requirements of Part 1 of Article 45 of the CPC RF (Part 4 of Article 1 of the CPC RF).

Individuals and organisations are released from payment of state duty when applying to a court for re-examination of judgements that have come into legal force on the basis of newly discovered or new circumstances, or when filing special appeals against a ruling of a first instance court issued after consideration of the given appeals, proceeding from the provisions of Provision 7 of Part 1 of Article 333 [36] of the Tax Code of the Russian Federation and the contents of Part 1 of Article 392 of the CPC RF, which envisage the possibility of re-examining judgements that have come into legal force on the basis not only of newly discovered but also new circumstances.

4. The three-month time limit stipulated by Article 394 of the CPC RF is the period for having recourse to court and, in the event that this is missed without good reason, this does not serve as grounds for returning an application or recommendation for re-examination of judgements that have come into legal force in the manner of Chapter 42 of the CPC RF or for refusing to accept them.

The question concerning observance of the given term should be clarified in a court session. Whereat it should be kept in mind that, if the time limit for having recourse to court is missed without good reason, this constitutes grounds for dismissing the given application or recommendation, which should be substantiated in the court ruling with reference to the provisions of Part 4 of Article 198 of the CPC RF (Part 4 of Article 1 of the CPC RF).

Proceeding from the principle of legal determinacy, for the purposes of observance of the rights of other persons to fair public trial within a reasonable time, as guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, when deciding whether it is possible to reinstate the given period, the court should be take into consideration not only whether the reasons for missing it were good ones but also whether the application or recommendation for re-examination of the judgement was filed in a timely fashion after the applicant became aware, or should have become aware, of the newly discovered or new circumstances.

5. In calculating the period for submitting an application or recommendation for re-examination of judgements that have come into legal force, the court should be guided by Article 395 of the CPC RF, bearing in mind the following:

a) if the application is filed on the basis of Provision 1, Part 3 of Article 392 of the CPC RF, the time limit for having recourse to court should run from the day following that on which the applicant became aware of the circumstances of material significance for the case;

b) if, as newly discovered circumstances, the following are knowingly named: false witness representation, false expert opinion, incorrect translation, falsified evidence, crimes of parties other than the case participants and their representatives, or crimes by judges (Provisions 2 and 3, Part 3 of Article 392 of the CPC RF), and if the following are stated as new circumstances: reversal of a general jurisdiction court ruling on a criminal, civil or administrative offence case or cancellation of an commercial court award or cancellation by the court of a ruling of a state or local government body, recognition as an invalid transaction of a judgement of a general jurisdiction or an commercial court that has already come into legal force (Provisions 1 and 2, Part 4 of Article 392 of the CPC RF), then the period for having recourse to court should run from the day following the effective date of the relevant judgement, which is determined according to the rules established by the criminal procedural, civil procedural and commercial procedural legislation or by the legislation on administrative offences;

c) if, as new circumstances, reference is made to determination (amendment) in a ruling of the Presidium of the Supreme Court of the Russian Federation of the practice of applying rules of law, the provisions by which the court was guided when considering a specific case in relation to an applicant for supervisory re-examination of the case, or to the results of supervisory re-examination of another case (Provision 5, Part 4 of Article 392 of the CPC RF), the period for having recourse to court runs from the day following that on which the text of the given ruling is posted on the official website of the Supreme Court of the Russian Federation.

If the applicant refers to adoption by the Plenary Session of the Supreme Court of the Russian Federation of a ruling determining (amending) the practice for applying rules of law by the court in a specific case (Provision 5, Part 4 of Article 392 of the CPC RF), the period runs from the day

following that on which the text of the given ruling of the Plenary Session is posted on the official website of the Supreme Court of the Russian Federation or is published in “Rossiyskaya Gazeta”;

d) in the event that an application or recommendation is submitted for re-examination of judgements that have come into legal force in connection with cancellation of the ruling of a state or local government body that served as the grounds specified in the application for adoption of the given judgement by a superior body, or official, or the body that issued this ruling (Provision 1, Part 4 of Article 392 of the CPC RF), then the period for having recourse to court should be counted as running from the day following adoption of the new ruling by the given bodies or officials, unless otherwise established by regulatory and legal acts governing the procedure for rulings issued by the given bodies and officials being adopted and coming into effect;

e) if the grounds for re-examination of a judgement are stated as being that the Constitutional Court of the Russian Federation recognised the law applied in the specific case relating to issue of the ruling with respect to which the applicant had recourse to the Constitutional Court of the Russian Federation as not complying with the Constitution of the Russian Federation (Provision 3, Part 4 of Article 392 of the CPC RF), then the period should run from the day following that on which the decision handed down after consideration of the case is announced or published (Article 79 of the Federal Constitutional Law of 21 July 1994 No. 1-FKZ “On the Constitutional Court of the Russian Federation”);

f) if the person having recourse to court states, as new circumstances, adoption by the European Court of Human Rights of a judgment on a specific case (Provision 4, Part 4 of Article 392 of the CPC RF), the period should run from the day following that on which the judgment of the European Court of Human Rights comes into legal force, which is determined in consideration of the provisions of Articles 28, 42 and 44 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

6. Applications and recommendations for re-examination of judgements that have come into legal force are considered according to the rules governing proceedings in a court of the relevant instance in the light of the provisions of Chapter 42 of the CPC RF.

After accepting an application or recommendation, the court appoints the time and place of the court session and notifies the case participants to this effect. Non-attendance by persons duly notified of the time and place of the court session does not, by virtue of the provisions of Article 396 of the CPC RF, constitute an impediment to the session being held.

In accordance with Article 396 of the CPC RF, the court considers such an application or recommendation in court session, studies the evidence produced in confirmation of the newly discovered or new circumstances on the case, hears the pleadings of the case participants, and performs other necessary procedural actions, which should be reflected in the minutes of the court session.

7. In consideration of the provisions of Paragraph 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Clause 1 of Article 61 of the CPC RF on administration of justice in courts within reasonable times, the above-specified applications or recommendations are considered by the Supreme Court of the Russian Federation within a maximum of two months and by other courts within one month, with reference to Part 1 of Article 386 of the CPC RF (Part 4 of Article 1 of the CPC RF), not counting the time from the day when the case is evoked until when it is received by the appeal or cassation court or the Presidium of the Supreme Court of the Russian Federation.

8. The list contained in Parts 3 and 4 of Article 392 of the CPC RF of grounds for re-examining judgements that have come into legal force on the basis of newly discovered or new circumstances is exhaustive.

Proceeding from the provisions secured in part two of the given article, newly discovered and new circumstances may constitute grounds for re-examining a judgement, provided they are of material significance for deciding the case correctly.

9. The newly discovered circumstances specified in Provision 1, Part 3 of Article 392 of the CPC RF are: actual circumstances relating to the case that had objectively occurred during consideration of the case and could affect the essence of the judgement adopted, about which the applicant and the court

did not know and could not have known when the given ruling was issued. At the same time, it should be borne in mind that new evidence produced on the case by the applicant may not serve as grounds for re-examining a judgement on the basis of newly discovered circumstances.

10. Courts should remember that deliberate false witness representation, false expert opinion, incorrect translation and falsified evidence established by a court verdict that has come into legal force constitute grounds for re-examining a judgement, if they entailed issue of an unlawful or unjustified judgement (Provision 2, Part 3 of Article 392 of the CPC RF).

Crimes committed by parties other than the case participants or their representatives, or crimes committed by judges when considering and deciding a case and established by a judicial verdict that has come into legal force (Provision 3, Part 3 of Article 392 of the CPC RF) constitute grounds for re-examining a judgement irrespective of whether these circumstances affected the outcome of the case.

The circumstances listed in paragraphs one and two of this clause, if established by court ruling or judgement, ruling of an investigating or inquiry officer on terminating a criminal case owing to expiry of the statute of limitations, as a consequence of official amnesty, or in connection with the death of the accused or the said person not having reached the age of criminal liability may also serve as grounds for re-examining a judgement on the basis of newly discovered circumstances, if the court recognises these circumstances as material to the case (Provision 1, Part 3 of Article 392 of the CPC RF).

11. Courts should take into account that grounds for re-examining judgements on the basis of new circumstances may consist in the circumstances listed in Part 4 of Article 392 of the CPC RF and arising after the judgement has been passed.

When considering applications or recommendations for re-examining judgements on the basis of new circumstances, account should be taken of the following:

a) if the reason for having recourse to court consisted in cancellation of a general jurisdiction or commercial court ruling that had come into legal force, or the ruling of a state or local government body that served as the basis for the judgement for which re-examination it requested (Provision 1,Part

4 of Article 392 of the CPC RF), it must be verified whether cancellation of the rulings of the given bodies impacted on the outcome of the case;

b) if the reason for having recourse to court consisted in recognition of a general jurisdiction or commercial court ruling that has come into legal force as an invalid transaction entailing adoption of an unlawful or unjustified judgement on the given case, this circumstance may serve as grounds for re-examining a judgement, given a conclusion on recognising an invalid, disputable or null and void transaction, or on applying the consequences of a null and void transaction in the resolutive and (or) reasoned part of a court decision on another case;

c) a ruling of the Constitutional Court of the Russian Federation may also constitute a new circumstance if it contains a different constitutional law interpretation of the regulatory provisions applied in the specific case in relation to the judicial act with respect to which the applicant had recourse to the Constitutional Court of the Russian Federation and by virtue of this entails re-examination of a judicial act in relation to the applicant (Provision 3, Part 4 of Article 392 of the CPC RF);

d) in accordance with Provision 4, Part 4 of Article 392 of the CPC RF, in consideration of Recommendation of the Committee of Ministers of the Council of Europe No. R (2000) 2 "On the Re-Examination or Reopening of Certain Cases at Domestic Level Following Judgments of the European Court of Human Rights", grounds for re-examining a judgement relies on a judgment of the European Court of Human Rights establishing a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms and (or) Protocols thereto that affects whether the decision on the applicant's case is correct;

e) a judgement may be re-examined on the grounds specified by Provision 5, Part 4 of Article 392 of the CPC RF, if a ruling of the Presidium or of the Plenary Session of the Supreme Court of the Russian Federation determining (amending) the practice of applying rules of law states the possibility of re-examining, on the basis of new circumstances, judgements that have come into legal force and during issue of which a different rule of law was applied by the court than that specified in the given ruling of the Presidium or of the Plenary Session of the Supreme Court of the Russian Federation. At the same time, it should be remembered that re-examination of judgements that have come into legal force is

permitted in the given case provided the new interpretation of the rules of law does not have an adverse impact on the position of the subordinate (weaker) party to public law relations.

12. If after considering an application or recommendation for re-examining a judgement on the basis of newly discovered or new circumstances, the court issues a ruling satisfying the application or recommendation and reversing the judgement, or refusing re-examination (Part 1 of Article 397 of the CPC RF), a copy of the ruling satisfying the application or recommendation is sent to the body responsible for executing the reversed judgement.

If a first instance, appeal or cassation court or the Presidium of the Supreme Court of the Russian Federation satisfies an application or recommendation for re-examining a judgement on the basis of newly discovered or new circumstances, this constitutes grounds for re-examination of the case by the relevant court according to the rules established by the CPC RF for a court of the given instance (Articles 393 and 397 of the CPC RF).

13. A special appeal or appeal recommendation of a public prosecutor may be filed in an appeal court against rulings issued by a first instance court in the manner of Chapter 42 of the CPC RF. If the special appeal or appeal recommendation against a ruling of a first instance or appeal court is dismissed, a cassation or supervisory appeal or appeal recommendation may be filed.

Proceeding from the provisions of Part 2 of Article 397 of the CPC RF, rulings based on consideration of an application or recommendation for re-examining a judgement on the basis of newly discovered or new circumstances by appeal or cassation courts or the Presidium of the Supreme Court of the Russian Federation come into legal force on the day they are issued and are not subject to appeal through an appeal court. At the same time, rulings of appeal and cassation courts may be appealed through a cassation court (with the exception of judgements of the Supreme Court of the Russian Federation) and in a supervisory manner by the Presidium of the Supreme Court of the Russian Federation, respectively.

14. When satisfying an appeal or appeal recommendation against a ruling of a first instance court refusing re-examination of a judgement in the manner of Chapter 42 of the CPC RF, the appeal court reverses the given ruling, as well as the judgement questioned by the appellant, provided there were

grounds envisaged by law for re-examining the judgement, the case is sent for consideration on the merits by the court whose judgement has been cancelled.

15. If a court of a higher instance, when considering an appeal or appeal recommendation against a ruling satisfying an application or recommendation for re-examining a judgement on the basis of newly discovered or new circumstances, concludes that the given ruling was unjustified, it issues a decision cancelling it and, at the same time, refuses re-examination of the judgement on the basis of newly discovered or new circumstances (Part 2 of Article 334 of the CPC RF, Provisions 2 and 5, Part 1 of Article 390, Provisions 2 and 5, Part 1 of Article 39112 of the CPC RF).

If a new judgement has been passed by the time an appeal against a court ruling satisfying an application or recommendation for re-examining a judgement on the case is heard, it too is subject to cancellation.

Ruling of the Plenary Session of the Supreme Court of the Russian Federation of 13 December 2012 No. 35 Moscow "On Open and Public Judicial Proceedings and on Access to Information on Court Matters"

Open and public judicial proceedings and timely, qualified and objective provision of information to the public on the activities of general jurisdiction courts (hereinafter the courts) promote a higher level of awareness of judicial administration and judicial proceedings, guarantee fair trial and provide for public control over the functioning of the judicial authorities. Public court hearings are one means for maintaining the public's trust in the courts.

For the purposes of ensuring open and public judicial proceedings, access for individuals, organisations, public associations, state and local government bodies, and representatives of media editorial boards (journalists) to information on court matters during consideration of civil cases, cases on administrative offences and criminal cases, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 9 and 14 of the Federal Constitutional Law "On Courts of General Jurisdiction in the Russian Federation", resolves to provide courts with the following clarifications:

1. Open and public judicial proceedings and access for individuals, organisations, public associations, state and local government bodies, representatives of media editorial boards (journalists) to information on court matters are ensured in accordance with the Constitution of the Russian Federation (Articles 19 and 23, Part 4 of Article 29, Article 33, Part 3 of Article 41, Articles 42, 45, 46 and 123), the Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Federal Constitutional Law of 31 December 1996 No. 1-FKZ "On the Judicial System of the Russian Federation", Federal Constitutional Law of 7 February 2011 No. 1-FKZ "On Courts of General Jurisdiction in the Russian Federation", the Civil Procedure Code of the Russian Federation (hereinafter the CPC RF), the Code of Administrative Offences the Russian Federation (hereinafter the Code of Administrative Offences of the RF), the Criminal Procedure Code of the Russian Federation (hereinafter the Criminal Procedure Code of the RF), Federal Law of 22 December 2008 No. 262-FZ "On Access to Information on Court Matters in the Russian Federation" (hereinafter the Law on access to information), Federal Law of 27 December 1991 No. 2124-I "On the Media", other regulatory and legal acts.

Courts should create the necessary conditions for open and public judicial proceedings and exercise of the right to information on court matters by the given bodies and persons, including persons with health restrictions, in consideration of the requirements of the Convention on the Rights of Persons with Disabilities 2006 and Federal Law dated 24 November 1995 No. 181-FZ "On Social Security for Persons with Disabilities in the Russian Federation". For instance, judicial proceedings on a case involving persons with health restrictions should be arranged in a courtroom that is accessible for them (on the ground floor, accessible by lift, and the like).

2. It is not permitted to restrict the open and public nature of judicial proceedings and the right to information on court matters on the basis of citizenship, social status, gender, race, nationality, language or political affiliation of individuals or depending on their origins, material and official status, place of residence, place of birth, attitude to religion, convictions, membership of public associations or other grounds not specified by federal law (Article 19 of the Constitution of the Russian Federation, Article 7 of the Federal Constitutional Law "On the Judicial System of the Russian Federation", Article 5 of the Federal Constitutional Law "On Courts of General Jurisdiction in the Russian Federation").

Courts should take into account the fact that restrictions on the right to information on court matters may be established for specific categories of persons only by federal law.

3. Open and public judicial proceedings and access to information on court matters should promote fulfilment of the tasks (purpose) of civil, administrative and criminal justice (Article 2 of the CPC RF, Article 24.1 of the Code of Administrative Offences of the RF, Article 6 of the Criminal Procedure Code of the RF) and should not entail any interference in judicial activities, since, when administering justice, courts are independent and subordinate only to the Constitution of the Russian Federation and the law (Article 120 of the Constitution of the Russian Federation, Article 5 of the Federal Constitutional Law "On the Judicial System of the Russian Federation", Provision 5 of Article 4 of the Law on access to information).

4. Public judicial proceedings ensure that persons not participating in the proceedings and representatives of media editorial boards (journalists) may attend court sessions (Article 123 of the Constitution of the Russian Federation, Article 6 of the Convention for the Protection of Human

Rights and Fundamental Freedoms, Part 1 of Article 10 of the CPC RF, Part 1 of Article 24.3 of the Code of Administrative Offences of the RF, Part 1 of Article 241 of the Criminal Procedure Code of the RF, Article 12 of the Law on access to information).

It is not permitted to hold open court sessions in premises precluding attendance by persons not involved in the proceedings or representatives of media editorial boards (journalists).

Attendance at a court session by minors not involved in civil cases, cases on administrative offences and criminal cases is permitted in consideration of the requirements of the Convention on the Rights of the Child 1989, Federal Law dated 29 December 2010 No. 436-FZ "On Protecting Children from Information Detrimental to Health or Development", as well as the procedural legislation of the Russian Federation.

Considering that presence of journalists in an open courtroom for the purposes of obtaining information on a case is a lawful means for seeking and obtaining information and that, in performing their professional activities, journalists are fulfilling their public duty (Article 49 of the Law of the Russian Federation "On the Media"), it is not permitted to create any impediments to or refuse them access to the courtroom by reason of their profession, lack of accreditation and (or) on other grounds not envisaged by law.

5. A case may be heard in camera only on the grounds specified by federal law, this applying to proceedings in general and a relevant part thereof (Parts 2 and 4 of Article 10 of the CPC RF, Part 1 of Article 24.3 of the Code of Administrative Offences of the RF, Parts 2 and 3 of Article 241 of the Criminal Procedure Code of the RF).

The court issues a reasoned ruling or resolution on holding the proceedings on a case in camera, stating the specific circumstances impeding free access to the courtroom by persons not participating in the proceedings and representatives of media editorial boards (journalists) (Part 4 of Article 10 of the CPC RF, Part 2 of Article 24.3 of the Code of Administrative Offences of the RF, Parts 2 and 2 [1] of Article 241 of the Criminal Procedure Code of the RF).

If minutes are kept of the judicial session, they and the introductory part of the judgment specify that the proceedings on the case were held in camera.

Courts should take into account that information on a case heard in camera should be made public.

6. Before a court ruling is issued and announced on holding case proceedings in camera, the court bailiffs ensuring public order in the courtroom (Article 11 of Federal Law dated 21 July 1997 No. 118-FZ "On Court Bailiffs") are not entitled to remove persons not participating in the proceedings or representatives of media editorial boards (journalists) from the courtroom or to hamper them in recording the course of the proceedings in connection with the case being heard in camera. If a court decision on hearing a case in camera is taken when the court session is scheduled, persons not participating in the proceedings and representatives of media editorial boards (journalists) are not allowed into the courtroom.

Once a court ruling or resolution has been issued and announced on holding case proceedings in camera, persons present in court but not participating in the proceedings are to be removed from the courtroom, this being stated in the minutes of the court session. Whereat, representatives of media editorial boards (journalists) should be permitted to leave the courtroom last.

If a court passes a decision on hearing part of a case in camera, persons present in court but not participating in the proceedings and representatives of media editorial boards (journalists) are not allowed to attend only this part of the proceedings.

7. The court considers civil cases in camera if they include official secrets or adoption secrets, or if there are other cases that federal law dictates should be heard in camera.

If a participant in the proceedings enters a relevant petition, the court is entitled to examine a civil case in camera to ensure personal privacy or security of commercial or other secrets protected by law, as well as information that, if discussed publicly, might constitute an impediment to correct examination of the case or entail violation of civil rights and legitimate interests (Part 2 of Article 10 of the CPC RF).

At the same time, it should be borne in mind that a request for a case to be heard in camera may come not only from a person petitioning in its own interests and (or) the representative thereof, but also from a person entitled by virtue of Articles 45, 46 and 47 of the CPC RF to act to protect the rights and

legitimate interests of other persons (for example, a public prosecutor, or guardianship or wardship authority).

8. The question of hearing a criminal case in camera on the grounds specified in Part 2 of Article 241 of the Criminal Procedure Code of the RF is decided in the ruling appointing the court session (Provision 5, Part 2 of Article 231 of the Criminal Procedure Code of the RF).

If circumstances that, by law, allow a criminal case to be examined in camera are established during the relevant proceedings in open court, the court decides, on its own initiative or on the basis of petitions from the parties, whether to hear the case in camera and issues a relevant ruling (resolution).

9. A case is heard in camera for security of official secrets only if the case files include information classed as official secrets and classified in the manner and on the basis of Law of the Russian Federation of 21 July 1993 No. 5485-1 "On Official Secrets". Whereat a case is heard by the court in camera for security of official secrets in the part in which such information is divulged and (or) studied.

10. It is permitted to hear a case in camera for security of commercial secrets if the information holder that entered the relevant petition had taken steps to protect its confidentiality in accordance with Article 10 of Federal Law dated 29 July 2004 No. 98-FZ "On Commercial Secrecy".

When deciding the question of hearing a case in camera for security of commercial secrets, courts should remember that commercial secrecy may not be established in relation to the information listed in Article 5 of the Federal Law "On Commercial Secrecy" or information that, by federal law, has to be disclosed or access to which may not be restricted (Provision 11 of Article 5 of the Federal Law "On Commercial Secrecy"). In addition, it should be kept in mind that the list of such information is also contained in Ruling of the Government of the RSFSR of 5 December 1991 No. 35 "On the List of Information That May Not Constitute a Commercial Secret".

11. The fact that a case involves information relating to the private lives of the case participants does not constitute unconditional grounds for a court decision on hearing the case in camera. When deciding whether a case should be heard in camera to ensure a person's right to privacy, courts should

bear in mind the nature and content of the personal information and the possible consequences of its disclosure.

However, in consideration of the provisions of Articles 182 and 185 of the CPC RF and Part 4 of Article 241 of the Criminal Procedure Code of the RF, correspondence, recordings of telephone and other conversations, telegraph, postal and other communications, as well as audio-recordings, photographs, video-recordings and filming of a personal nature are divulged and studied in the course of open proceedings only with relevant consent from the persons concerned.

12. Access to information on court matters is also ensured by entitling persons present in the open courtroom as participants in the proceedings or otherwise and representatives of media editorial boards (journalists) to record the course of the proceedings (Article 12 of the Law on access to information) in the manner and forms specified by Part 7 of Article 10 of the CPC RF, Part 3 of Article 24.3 of the Code of Administrative Offences of the RF and Part 5 of Article 241 of the Criminal Procedure Code of the RF (in written form, as an audio-recording, photographs, video-recording, film or broadcast of the proceedings).

Courts should grant equal conditions to all those present in open court and representatives of media editorial boards (journalists) for exercising such rights.

13. To draw the attention of courts to the fact that the provisions of Part 7 of Article 10 of the CPC RF, Part 3 of Article 24.3 of the Code of Administrative Offences of the RF, and Part 5 of Article 241 of the Criminal Procedure Code of the RF do not require persons present in open court and recording the proceedings in writing and (or) with an audio-recorder to notify the court and obtain its permission to record the proceedings in the given format.

Recording of proceedings in writing includes maintaining text entries directly on public information and telecommunications networks (hereinafter the Internet) using computer and other hardware or making drawings of the proceedings.

The permission of the court is mandatory for photographing, video-recording and filming, as well as radio and (or) television broadcasting of proceedings (Part 7 of Article 10 of the CPC RF, Part 3 of

Article 24.3 of the Code of Administrative Offences of the RF, Part 5 of Article 241 of the Criminal Procedure Code of the RF). The same applies to video-transmission of the proceedings on the Internet.

14. Persons present in open court but not participating in the proceedings and representatives of media editorial boards (journalists) who wish to photograph, make a video-recording, film or transmit proceedings in open court should submit a relevant request (application) to the court. Such a request is entered in the minutes of the court session, if minutes are kept, and is subject to mandatory review by the court in consideration of the opinion of the participants in the proceedings.

When deciding whether photographing, video-recording, filming or transmission of open court proceedings is permissible, the court should proceed from such recording being possible with respect to any case other than when this might violate the rights and legitimate interests of the participants in the proceedings, including the rights to privacy, personal and family secrecy, protection of dignity and good name, and secrecy of correspondence, telephone conversations, postal, telegraph and communications containing information of a personal nature (Article 23 and Part 4 of Article 29 of the Constitution of the Russian Federation, Part 7 of Article 10 of the CPC RF, Part 3 of Article 24.3 of the Code of Administrative Offences of the RF, Part 5 of Article 241 of the Criminal Procedure Code of the RF).

If the court concludes that photographing, video-recording, filming or transmission of open court proceedings will not violate the rights and legitimate interests of participants in the proceedings, it may not prohibit them merely by reason of subjective or unreasoned reluctance on the part of participants in the proceedings with respect to such recording.

15. A court decision permitting or rejecting a request (application) from persons present in open court but not participating in the proceedings and representatives of media editorial boards (journalists) to carry out photographing, video-recording, filming or transmission of open court proceedings is reflected in the minutes of the court session (Provision 7, Part 2 of Article 229 of the CPC RF, Provision 7, Part 3 of Article 259 of the Criminal Procedure Code of the RF). Whereat the court's dismissal of a request (application) by such persons to make such recordings should be reasoned (Provision 5, Part 1 of Article 225 of the CPC RF, Part 4 of Article 7 of the Criminal Procedure Code of the RF).

16. Audio-recordings, photographs, video-recordings and film obtained as a result of recording the course of proceedings and conducted by participants in the proceedings, persons present in open court but not participating in the proceedings and representatives of media editorial boards (journalists) in observance of the requirements of the procedural legislation of the Russian Federation may not be retrieved therefrom by the court.

In the manner envisaged by the procedural legislation of the Russian Federation (Articles 35 and 166 of the CPC RF, Article 24.4 of the Code of Administrative Offences of the RF, Articles 119–122 of the Criminal Procedure Code of the RF), participants in proceedings are entitled to petition for materials obtained from recording the proceedings to be attached to the case. Whereat materials obtained from other participants in the proceedings or other persons not participating in the proceedings and representatives of media editorial boards (journalists) recording the proceedings may be attached to the case only if they consent to produce the given materials.

17. Abuse by persons present in open court or representatives of media editorial boards (journalists) of the right to attend a court session and to record the proceedings, as well as recording of proceedings without the court's permission when required by law, constitutes breach of order in a court session. In this case, the court is entitled to apply, in the court session, the sanctions envisaged by the procedural legislation of the Russian Federation (Articles 158 and 159 of the CPC RF, Article 258 of the Criminal Procedure Code of the RF).

18. If technically possible, courts should record the proceedings using audio-recording and other technical means and, if the courtroom in which the case is heard does not have sufficient capacity, broadcast the proceedings in real time within the court building using suitable equipment. Recordings made by the court of proceedings (such as an audio-recording medium) are attached to the case (Part 1 of Article 230 of the CPC RF, Part 5 of Article 259 of the Criminal Procedure Code of the RF).

19. Visitors and representatives of media editorial boards (journalists) should be allowed free access to the court building with audio-, photo-, filming- and video-equipment.

The conditions for such persons to be present in the court building are determined by acts regulating aspects of the internal activities of the court, which should be available on entry into the court building.

20. In consideration of the requirements of Part 8 of Article 10 and of Article 193 of the CPC RF, of Article 29.11 of the Code of Administrative Offences of the RF, and Part 7 of Article 241 of the Criminal Procedure Code of the RF, judgments made after consideration of civil cases, cases on administrative offences and criminal cases are announced (proclaimed) publicly, whether or not the case was heard in open court or in camera, with the exception of instances stipulated by law.

In particular, a court decision on a civil case that affects the rights and legitimate interests of minors is proclaimed in camera (for example, announcement of a court decision on an adoption case).

21. Proceeding from the provisions of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, if the procedural legislation of the Russian Federation provides for a court session to be held in the absence of participants in the proceedings, the requirement for public announcement (proclamation) of the judgment is deemed observed on the condition that an unrestricted group of persons have the opportunity to familiarise themselves with the text of said judgment (for example, the text of the judgment is provided to the court administrative office), unless the law prohibits public announcement (proclamation) of judgments.

22. In the meaning of the provisions of Article 10 of the CPC RF, Article 24.3 of the Code of Administrative Offences of the RF, and Article 241 of the Criminal Procedure Code of the RF, open judicial proceedings are provided for at all stages. In connection with this, in courts of higher instances, the procedure for holding of a court session (open or in camera) is determined in each case proceeding from the requirements of the procedural legislation of the Russian Federation and the specific circumstances of the case, irrespective of how the case was heard by the lower courts.

23. Failure, in the course of court hearings, to observe the requirements for open judicial proceedings (Article 10 of the CPC RF, Article 24.3 of the Code of Administrative Offences of the RF, Article 241 of the Criminal Procedure Code of the RF) testifies to violation by the court of the rules of procedural law and constitutes grounds for cancelling judgments if the given violation led or might have led to an unlawful and (or) unjustified decision being issued, precluded comprehensive, full and objective examination of an administrative offence case or led or might have led to an unlawful, unjustified or unjust sentence being handed down (Provision 4, Part 1 and Part 3 of Article 330, Article 387 of the CPC RF, Provisions 3 and 4, Part 1 of Article 30.7, Provisions 3 and 4, Part 2 of Article 30.17 of the

Code of Administrative Offences of the RF, Provision 2, Part 1 of Article 369, Part 1 of Article 381 of the Criminal Procedure Code of the RF). Thus, if all proceedings on a case are held in camera in the absence of the grounds envisaged for this by Part 2 of Article 10 of the CPC RF, Part 1 of Article 24.3 of the Code of Administrative Offences of the RF and Part 2 of Article 241 of the Criminal Procedure Code of the RF, this constitutes a violation of the principle of open judicial proceedings and entails reversal of the judgments in the manner established by law.

If the judge deliberately creates conditions restricting or excluding access to an open court session for persons not participating in the proceedings, including representatives of media editorial boards (journalists), or impeding recording of the proceedings, this testifies to violation of professional ethics.

24. On the basis of the Law on access to information, judges provide users with:

- information prepared by courts within the scope of their authority when administering justice (for example, information on progress of the case or case materials) and other powers included by law in the competence of courts (for example, reviews of court practice approved for publication by the praesidia of the relevant courts);

- information received by courts and relating to court matters (for example, judicial statistics of the Judicial Department of the Supreme Court of the Russian Federation). At the same time, information on court matters does not include information contained in enquiries received by courts, so the court is not entitled to provide such information with reference to Provision 2 of Article 1 of the Law on access to information;

- judicial acts on specific cases, i.e., judgments made in the form stipulated by the relevant law on the merits of the case by first instance, appeal, cassation or supervisory courts;

- information contained in acts regulating the activities of courts (for example, court regulations);

- information on the legislation establishing the procedure for judicial proceedings, the powers of courts and rules on court procedure.

Within the scope of their competence, courts also provide other information in accordance with federal laws, in particular Law of the Russian Federation of 26 June 1992 No. 3132-I “On the Status of Judges

in the Russian Federation", Federal Law of 25 December 2008 No. 273-FZ "On Combating Corruption", and Federal Law of 21 July 2005 No. 94-FZ "On Placement of Orders for Supply of Goods, Performance of Work and Rendering of Services for State and Municipal Needs".

25. Information on the activities of courts is open and accessible (Provision 1 of Article 4 of the Law on access to information), unless federal laws restrict access to such information (Article 5 of the Law on access to information).

Restricted access information includes official secrets (Article 5 of the Law of the Russian Federation "On Official Secrets"), other secrets protected by law (such as adoption secrets) (Article 139 of the Family Code of the Russian Federation), medical secrets (Article 13 of Federal Law dated 21 November 2011 No. 323-FZ "On the Fundamentals of Public Health in the Russian Federation"), as well as other information to which access is restricted on the basis of a federal law (for example, information on persons entitled to state protection in accordance with Federal Law of 20 August 2004 No. 119-FZ "On State Protection of Victims, Witnesses and Other Participants in Criminal Proceedings").

The court is not entitled to refuse to provide requested information by stating that part of it consists of restricted access information. In this case, the publicly accessible part of the information is provided (Part 3 of Article 19 of the Law on access to information).

26. Information provided to users on the activities of courts should be reliable and up-to-date (Provision 2 of Article 4 of the Law on access to information), i.e., should comply with reality and be furnished within the period established by law.

Courts should take into account the nature of the requested information and its significance (urgency) for the user at the specific time and take steps to provide such information promptly.

27. Information on court matters may be supplied to users on the basis of a request therefrom, i.e., an address to the court in either verbal or written form, including an electronic document (Articles 1 and 6 of the Law on access to information). A request received by the court via the Internet, i.e., a request in the form of an electronic document, is subject to the general requirements on execution of written requests (Part 7 of Article 18 of the Law on access to information).

Information on court matters that does not require special verification or search may be provided in response to a verbal request. For instance, information on the time and place of a court session, on the outcome of a case or on the case being handed over to the court administrative office may be furnished in response to such a request.

Courts are not entitled to refuse such information in response to a verbal request from representatives of media editorial boards (journalists).

28. Courts should remember that the period for considering a request for information on court matters runs from the day of its registration (Part 4 of Article 18 of the Law on access to information). For the purposes of timely provision of requested information, courts should ensure observance of the time periods set in acts regulating document flow and paperwork management in courts for registration of incoming requests, including in the format of an electronic document, as well as the responses thereto.

29. The grounds precluding provision of information on court matters are listed in Article 20 of the Law on access to information, this list being exhaustive.

At the same time, account should be taken of the fact that, if requested information is published in the media and (or) placed on official court websites, courts are entitled not to provide such information (Part 2 of Article 20 of the Law on access to information) but to confine themselves to supplying the name, issue date and number of the media resource in which the requested information is published, and (or) the address of the official website, indicating the page on which the requested information is posted (Part 2 of Article 19 of the Law on access to information).

30. Users are supplied with archived information on court matters in the manner established by the legislation of the Russian Federation on archiving and other regulatory and legal acts issued in relation thereto (Article 17 of the Law on access to information). In particular, such acts include Federal Law of 22 October 2004 No. 125-FZ “On Archiving in the Russian Federation”; Instructions on selection of documents for storage in the archives of federal courts of general jurisdiction, their collection, recording and use; List of documents of federal courts of general jurisdiction specifying the time period for their storage.

Since archived information on court matters may be provided in electronic format (Article 24 of the Federal Law "On Archiving in the Russian Federation"), courts should take steps to store documents in such format, including by creating electronic document archives.

31. Access to information on court matters is ensured by posting it on the Internet in accordance with the Regulations on creation and maintenance of official court websites; Regulations on placement of information on matters relating to general jurisdiction courts, bodies of the community of judges and the system of the Judicial Department of the Supreme Court of the Russian Federation on the Internet; Regulations on arranging placement of information on cases being handled by the court and texts of judicial acts on public information and telecommunications networks on the official website of a court of general jurisdiction.

Information constituting information on court matters and subject to mandatory placement on the Internet is listed in Article 14 of the Law on access to information.

Considering that the powers to maintain judicial statistics and draw up consolidated statistical reporting belong to the Judicial Department of the Supreme Court of the Russian Federation (Provision 12 of Article 6 of Federal Law dated 8 January 1998 No. 7-FZ "On the Judicial Department of the Supreme Court of the Russian Federation"), official court websites include a link to the official website of the Judicial Department of the Supreme Court of the Russian Federation (section "Judicial statistics") and (or) official judicial statistics drawn up by the Judicial Department of the Supreme Court of the Russian Federation.

32. Texts of judgments, as well as information on relevant appeals and the results of appeals, should be placed on official court websites in accordance with the requirements of Article 15 of the Law on access to information.

To draw the attention of courts to the fact that information constituting official secrets or other secrets protected by law, as well as personal data, other than the surname and initials of the claimant, defendant, third party, civil claimant, civil defendant, person found guilty or innocent, persons subject to administrative offence proceedings, court secretary, judge, public prosecutor, advocate and representative, should be excluded from the texts of judgments. At the same time, the texts of

judgments subject to publication by virtue of law (such as the text of a court decision recognising a regulatory or legal act or part thereof as inoperative) are posted in full on official court websites.

33. For the purposes of prompt familiarisation of users with current information on court matters, information stands and (or) technical equipment for the same purpose should be set up on court premises to display the information listed in Part 1 of Article 16 of the Law on access to information. The given stands should be located where accessible for users, including persons with health restrictions.

34. Alongside the methods established by Article 6 of the Law on access to information, use may also be made of other means for providing access to information on court matters that do not contravene the law or violate the principle of independence of the judiciary (in particular, individuals may be received, interviews conducted, press conferences held, public speeches made and press releases distributed).

35. To maintain a balance between independence of the judiciary and satisfaction of public interest in court matters, official representatives of courts collaborate with media editorial boards and other interested persons.

To draw the attention of courts to the fact that official representatives of courts who collaborate with media editorial board include court chairmen. A press secretary and other officials liaising with the media are official court representatives only if they are duly authorised by court chairmen (Article 22 of the Law on access to information).

Part 2 of Article 21 of the Law on access to information determines the forms of interaction between courts and media editorial boards for providing users with information on court matters. Official court representatives should take into account that the given list of forms of interaction is not exhaustive. Thus, other forms of collaboration between courts and media editorial boards for providing users with information on court matters include, in particular:

- notification of representatives of media editorial boards (journalists) of impending court sessions on cases of public interest;

- publication or other distribution in the media of information on judgments that have come into legal force on cases of public interest (for example, on recognising decisions of an electoral commission on election results as unlawful), as well as information on cancellation or amendment of judgments, if they were published previously or otherwise distributed in the media;

- assistance to representatives of media editorial boards (journalists) in organising video-transmission on the Internet of open court proceedings and publishing information on such transmission in the media on cases that have aroused public interest.

36. To recommend to the Federal State Budgetary Educational Institution for higher professional education “Russian Academy of Justice” to introduce into the study programmes for further training of judges and professional retraining of newly appointed judges a special course devoted to application of the rules regulating open and public judicial proceedings and access to information on court matters.