SOME LEGAL MECHANISM PROBLEMS FOR ECONOMIC DISPUTE RESOLUTION IN RUSSIAN FEDERATION
DOI: https://doi.org/10.24115/S2446-622020206Extra-A564p.103-108

Korolev Ivan Igorevich
Zaychenko Elena Viktorovna
Turłukowski Jarosław
Makolkin Nikita Nikolayevich

ABSTRACT
The aim of the study is to analyze the current state of arbitration system in the Russian Federation and also the consequences of procedural legislation reform, which has become a trigger for transformations in the system of arbitration courts. The authors consider the creation mechanisms and some aspects of arbitration institution functioning, based on the norms of the current legislation. This review is given both in relation to permanent arbitration institutions and in relation to the courts created to consider one specific dispute. In the course of this study, the authors found that a gap in legal regulation remained after the arbitration legislation reform, since it remains possible to create ad hoc “pocket” courts instead of abolished arbitration courts at any institutions. And if initially it seemed that this problem would be solved, now it is necessary to fight against such a mechanical opportunity to get the necessary “comfortable” judges.

Keywords: Economic disputes. Arbitration courts. Court system. Civil procedure. Arbitration.

ALGUNS PROBLEMAS DE MECANISMO LEGAL PARA RESOLUÇÃO DE DISPUTAS ECONÔMICAS NA FEDERAÇÃO RUSSA

ALGUNS PROBLEMAS DEL MECANISMO LEGAL PARA LA RESOLUCIÓN DE DISPUTAS ECONÓMICAS EN LA FEDERACIÓN DE RUSIA

RESUMO
O objetivo do estudo é analisar o estado atual do sistema de arbitragem na Federación Russa e também as consequências da reforma da legislação processual, que se tornou um gatilho para transformações no sistema de tribunais arbitrais. Os autores consideram os mecanismos de criação e alguns aspectos do funcionamento da instituição arbitral, com base nas normas da legislação em vigor. Essa revisão é feita tanto em relação às instituições arbitrais permanentes quanto em relação aos tribunais criados para considerar uma disputa específica. No decorrer deste estudo, os autores descobriram que uma lacuna na regulamentação legal permaneceu após a reforma da legislação de arbitragem, uma vez que ainda é possível criar tribunais de bolsa ad hoc em vez de tribunais de arbitragem abolidos em quaisquer instituições. E se inicialmente parecia que esse problema seria resolvido, agora é preciso lutar contra essa oportunidade mecânica de obter os juízes “comfortáveis” necessários.


RESUMEN
El objetivo del estudio es analizar el estado actual del sistema de arbitraje en la Federación de Rusia y también las consecuencias de la reforma de la legislación procesal, que se ha convertido en un detonante de transformaciones en el sistema de tribunales de arbitraje. Los autores consideran los mecanismos de creación y algunos aspectos del funcionamiento de la institución arbitral, con base en las normas de la legislación vigente. Esta revisión se da tanto en relación con las instituciones de arbitraje permanentes como en relación con los tribunales creados para considerar una disputa específica. En el curso de este estudio, los autores encontraron que quedaba un vacío en la regulación legal después de la reforma de la legislación de arbitraje, ya que sigue siendo posible crear tribunales “de bolsillo” ad hoc en lugar de tribunales de arbitraje abolidos en cualquier institución. Y si en un principio parecía que este problema se solucionaría, ahora hay que luchar contra una oportunidad tan mecánica para conseguir los jueces “cómodos” necesarios.

INTRODUCTION
At present, the state of civil turnover in Russia should be characterized as sufficiently developed: the number of transactions concluded between legal entities and individuals, which are distinguished by their complexity and diversity, is growing steadily. The reason for this is the development of the market economy in the Russian Federation. International trade is also actively carried out, the world is becoming global, for example, in 2019, the world trade turnover amounted to 19.5 trillion US dollars, of which Russia accounted for 666.6 billion US dollars. Obviously, such a level of trade cannot be achieved without proper judicial protection of the participants in civil turnover. All this becomes possible due to the development of law - one of the most important products of human civilization. The current situation with the system of economic dispute consideration in the Russian Federation requires a separate mention. In our opinion, it is not complete at present. This is due to the fact that institutions are affected. We should recall the situation with the merger of the Supreme Arbitration Court and the Supreme Court of the Russian Federation. Let's also note the reform of the arbitration proceedings in the Russian Federation. All these events have changed the landscape of the economic dispute settlement system in the Russian Federation.

There is a variety of state judicial systems in the world today. This state of affairs is conditioned by the presence of a number of factors, including historical, socio-economic and others. At the same time, the dynamic development of society, as well as the complication of civil relations determine the need for the development of various courts (YAKOVLEV, 2013). At the same time, a common tendency for an overwhelming number of countries is the congestion of state courts. In these conditions, in order to ensure the right to an effective and timely resolution of disputes arising between the participants in civil circulation, alternative methods of dispute resolution (conflict settlement) become of paramount importance, the key and most popular of which is arbitration (arbitration proceedings).

METHODS
In this work, the dialectical method is used, which made it possible to learn the essence of the legal regulation of relations on the emergence and consideration of economic disputes in indissoluble unity and general coherence. Legal study is also facilitated by logical techniques in the form of analysis and synthesis, induction and deduction, comparison and generalization, analogy and typology. With their help, a differentiated legal regulation of social relation varieties has been developed in the field of economic dispute resolution. The formal legal method made it possible to understand the essence and significance of legal norms governing the relations arising from the consideration of economic disputes.

RESULTS AND DISCUSSION
The reform of the judicial system of the Russian Federation (2013-2014), the central element of which was the unification of two of three existing higher courts of the country, was accompanied by heated discussions about its feasibility, prospects for achieving the main goals and key risks (GOLUBTSOV, 2013). Among the priority tasks of the reform in official documents and most publications were the following ones: ensuring the uniformity of judicial practice, the unity of approaches in the administration of justice both in relation to citizens and in relation to legal entities, the exclusion of the possibility of judicial protection denial in the event of a dispute over the case jurisdiction, the establishment of general rules organization concerning legal proceedings, elimination of disputes about competence. However, at present it can be noted that the Judicial Collegium for Economic Disputes has not become a replacement for the Presidium of the Supreme Arbitration Court of the Russian Federation, since it does not have such a legal status, and economic disputes are practically not submitted to the Presidium of the AC of the Russian Federation.

Following the judicial reform in 2015, the adoption of the new Law on Arbitration launched the reform of arbitration proceedings, the official goal of which was to streamline relations in the field of arbitration (arbitration proceedings), to terminate the activities of potential arbitration proceedings dependent on one of the parties - “pocket” arbitration courts in case of one or another organization, reducing the risks of putting pressure on the arbitrators by one of the parties to a possible dispute.

At present, after implementation of the arbitration reform, there are still two types of arbitration courts:
• an arbitration tribunal, formed and carrying out its activities with the assistance and in accordance with the rules of permanent arbitration institutions (hereinafter referred to as the PAI), or institutional arbitration (VAJDA, 2018);

• an arbitration tribunal carrying out arbitration during the absence of administration on the part of the PAI (except for the possible performance of certain functions for the administration of a specific dispute by PAI, if it is provided by the agreement of the parties to the arbitration), or an arbitration court formed by the parties to resolve a specific dispute (ad hoc).

The main features of the legal status of ad hoc arbitration in accordance with the post-reform legislation are as follows:

1) the conditions for the activities of such a court are determined by an agreement of the parties (in particular, the parties determine the amount of the arbitrator’s fee, the place of document keeping (part 4, article 22, part 1, article 39 of the Arbitration Law);

2) the competence of ad hoc arbitration is limited: the disputes related to the creation of a legal entity in Russia, its management or participation in a legal entity, can only be considered within the framework of arbitration administered by the PAI, and are not subject to consideration by an arbitration tribunal formed to resolve a specific dispute (part 7, 7.1, Article 45 of the Arbitration Law);

3) the parties to ad hoc arbitration are not granted the right to conclude agreements on the refusal of the possibility of applying to a state court for assistance (part 4 of the article 11, part 3 of the article 13, part 1 of the article 14 of the Law on Arbitration);

4) unlike arbitration administered by PAI, ad hoc arbitration is not granted the right to apply to a competent court for assistance in evidence provision (Article 30 of the Arbitration Law);

5) the parties do not have the right to recognize the decision of such a court as final; it can be canceled on the grounds provided for by procedural legislation (the Article 40 of the Arbitration Law).

The parties to the ad hoc arbitration have the right to entrust the performance of certain functions for the administration of a specific dispute to PAI. However, this does not entail the recognition of such arbitration as administered by PAI (part 19, article 44 of the Arbitration Law) (Feldman, 2016; Böckstiegel, 2014).

PAI can be created only with non-profit organizations (part 1, article 44 of the Law on Arbitration). It is not allowed to create one PAI at the same time with two or more non-profit organizations (part 2, article 44 of the Law on Arbitration).

It is not allowed to create PAI by federal government bodies, the government bodies of the constituent entities of the Russian Federation, local government bodies, state and municipal institutions, state corporations, state companies, political parties and religious organizations, as well as lawyers’ associations, the chambers of lawyers of the RF constituent entities and the Federal Chamber of Lawyers of the Russian Federation, notary chambers and the Federal Notary Chamber (part 2, article 44 of the Law on Arbitration).

In this case, the right to exercise the functions of PAI can also be granted to a foreign arbitration institution, subject to certain conditions (part 41, article 44 of the Law on Arbitration) (PETERSMANN, 1999; Stern, 2007).

The procedure for obtaining the status of PAI includes the following stages:

1. Applying for the granting of the right to exercise the functions of PAI. A non-profit organization under which a PAI is created, or a foreign arbitration institution prepares and submits a set of documents to the Ministry of Justice of Russia for consideration by the Council to improve arbitration proceedings (hereinafter referred to as the Council) (clause 36 of the Regulations on the procedure for the creation and activities of the Council for the improvement of arbitration proceedings, approved Order of the Ministry of Justice of Russia № 45 dated on 20.03.2019 (hereinafter - the Regulation on the procedure for the Council creation and operation). The list of documents is determined by Part 61, 62, Article 44 of the Law on Arbitration.

For a foreign arbitral institution, the criteria for a widely recognized international reputation are applied (Section V of the Regulations on the Procedure for the Council Establishment and Operation).

2. Technical examination of documents. If the documents are not submitted to the Council in full, as well as drawn up with the violations of the RF legislation, the Chairman of the Council or the Deputy Chairman of the Council on behalf the Chairman of the Council, refuses the document further consideration within 10 working days from the
date of the document receipt. The return of all submitted documents is carried out by the Secretary of the Council within 3 working days from the date of the relevant decision (clause 39 of the Regulation on the procedure for the creation and operation of the Council).

3. Consideration of documents and issuance of recommendations. The Council, if there are no grounds for refusal to consider the submitted documents, considers these documents and conducts a vote at a meeting of the Council on the issue of fulfilling the requirements provided for by the Law on Arbitration and the paragraphs 25-34 of the Regulations on the Procedure and Activities of the Council (clause 41 of the Regulation on the procedure for the Council creation and operation) within 3 months from the date of their receipt.

4. Preparation of a draft order by the Ministry of Justice of Russia. Based on the results of voting by the members of the Council, a draft order by the Ministry of Justice of Russia is being prepared on granting (Appendix No. 5 to the Regulation on the procedure for the creation and operation of the Council) or on refusal (Appendix n. 3 and 4 to the Regulation on the procedure for the creation and operation of the Council) to grant the right to exercise PAI functions within 15 working days from the date of the Council meeting (the clauses 43, 45 of the Regulation on the procedure for the creation and activities of the Council). The prepared draft order is submitted to the Ministry of Justice of Russia for signature (clause 47 of the Regulation on the Council procedure and activities).

5. Bringing information about the decision made to the attention of a non-profit organization. The Ministry of Justice of Russia notifies the non-profit organization about the adopted order with a copy within 3 (three) working days from the date of its signing (clauses 44, 48 of the Regulations on the procedure for the Council creation and operation).

6. Placement of the arbitration rules on the website, notification of the Ministry of Justice of Russia. After granting a non-profit organization the right to exercise the functions of PAI, it is obliged to post the deposited arbitration rules on its website and notify the Ministry of Justice of Russia in writing (part 13, article 44 of the Arbitration Law). The procedure for sending such a notification is governed by the Order of the Ministry of Justice of Russia No. 200 “On approval of the Procedure for sending a notification concerning the placement of the deposited arbitration rules on its website” dated on August 31, 2016.

After the Ministry of Justice of Russia receives the specified notification, the PAI can carry out activities for the administration of arbitration (part 13, article 44 of the Law on Arbitration).

The fight against “pocket” courts resulted in a sharp decrease of permanent arbitration court number and, thus, in the decrease of disputes considered by arbitration courts. This inevitably reduced the burden on state courts to consider disputes in cases of contesting and issuing writs of execution for the enforcement of arbitral resolutions (Table1).

**Table1.** the data of judicial statistics from the Reports on the work of the arbitration courts of the subjects during 2015 – 2019

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>The cases on challenging the decisions of arbitration courts</td>
<td>488</td>
<td>577</td>
<td>401</td>
<td>256</td>
<td>82</td>
</tr>
<tr>
<td>The cases on the issue of writs of execution for compulsory execution of arbitration court resolutions</td>
<td>7694</td>
<td>7324</td>
<td>5390</td>
<td>1770</td>
<td>887</td>
</tr>
</tbody>
</table>


It can be concluded that a significant reduction of the burden on state courts in cases of these categories was one of the key implicit goals of the arbitration reform, which was achieved.

Currently, there are only 5 national PAI in Russia, including the specialized ICAC and IAC at the RF CCI, as well as the National Center for Sports Arbitration at the Autonomous Non-Commercial Organization “Sports Arbitration Chamber”. At that, the number of arbitration courts was more than 1.5 thousand before the reform [End of the arbitration era 2017]. Besides, in 2019, 2 foreign arbitration institutions - the Hong Kong International Arbitration Center (HKIAC) and the Vienna International Arbitration Center (VIAC) - were granted the right to administer arbitration on the RF territory.

The main problem is that at the moment it is quite difficult to get a recommendation from the Council for the improvement of arbitration proceedings under the RF Ministry of Justice for the subsequent acquisition of the right to exercise the PAI functions. However, the demand for arbitration proceedings is still high. In this regard, the development of institutional arbitration means the creation of regional branches of those few Moscow-based
arbitration institutions that are entitled to perform the functions of arbitration proceeding administering on an ongoing basis. Besides, an appeal to ad hoc arbitration has become more popular.

CONCLUSIONS
Thus, as the result of arbitration court reform, the rules for their creation and operation have been changed significantly: the authorization procedure for the formation of PAI has been established, the functions of control and assistance to arbitration courts by state courts have been defined more clearly, the legal status of ad hoc arbitration has been determined, and the possibility of corporate dispute transfer is provided for consideration by the arbitration court and others. These innovations have already started working in practice. Thus, it is important to take them into account, also during formulation the terms of arbitration agreements (arbitration clauses).

SUMMARY
The successful establishment and development of arbitration proceedings, including international commercial arbitration as an alternative way of dispute resolution, is impossible without the state support. Moreover, such support can be carried out, for example, through the legislative regulation of arbitration aimed at its development stimulation.

In particular, the conceptual idea underlying the interaction of the state court and arbitration is formulated in the Art. 5 of the Law on International Commercial Arbitration, the art. 5 of the Arbitration Law regarding the limits of court intervention: in the matters governed by the relevant laws, no judicial interference should take place, except in the cases where it is provided for by these laws. Thus, the limits of the state court intervention are legally limited, and these restrictions are associated with the performance of certain functions of assistance and control by the state court in accordance with the cases mentioned in the Art. 6 and provided by law. At the same time, specialized laws use the concepts of assistance and control to designate the limits of the state court intervention in relations related to arbitration, including international commercial arbitration, and the specification of state court powers in the field of assistance and control and the procedure for their implementation are contained in the current procedural codes - the APC RF and the RF Code of Civil Procedure.

ACKNOWLEDGEMENTS
The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

REFERÊNCIAS


Received: 20 Oct.2020
Approved: 01 Dec.2020

1Candidate of Law, Law Faculty of KFU, Kazan Federal University, Kazan, Russia. E-mail: korolevlaw@gmail.com. ORCID ID: https://orcid.org/0000-0001-6147-008X.

2Candidate of Law, Law Faculty of MSU, Lomonosov Moscow State University, Moscow, Russia. E-mail: elena.zajchenko@list.ru. ORCID ID: https://orcid.org/0000-0002-9109-0464.

3PhD, Faculty of Law and Administration, University of Warsaw, Warsaw, Poland. E-mail: turlukowski@wpipw.edu.pl. ORCID ID: https://orcid.org/0000-0003-0407-2098.

4Graduate student, LLM, Assistant of the Deputy Dean for Science Activities Law Faculty of KFU, Kazan Federal University. E-mail: nikita.makolkin@gmail.com. ORCID ID: https://orcid.org/0000-0002-0528-8862.