

The development of arbitration proceedings in Russia

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Abstract: The article reviews the general development of arbitration proceedings in the Russian Federation. The paper's main aim is to review the general development of arbitration proceedings in the Russian Federation. Using the legal comparative method allowed us to study national and foreign legislation to formulate conclusions about developing the arbitration procedure in Russian legislation. The application of the formal legal analysis made it possible to understand the concept of the arbitration court from a Russian perspective. A brief historical excursion of the development of arbitration proceedings, starting from the twelfth century, was made to achieve the paper's aim. Following that, the author delves into the 2016 arbitration reform, its significance and the current state of arbitration in Russia. The author briefly describes and analyzes permanent arbitration institutions operating in the Russian Federation. At the end of the article, the author discusses the current trends in the development of arbitration and the challenges facing arbitration proceedings in Russia.

Keywords: Arbitral proceedings. Development. Arbitration. Alternative dispute resolution. Regulation disputes.

Summary: 1 Introduction – 2 Arbitration Proceedings in the Russian Federation: The Genesis – 3 Arbitration proceedings in the modern Russian Federation – 4 The concept of arbitration court in Russia – 5 Conclusion – References

1 Introduction

Arbitration proceeding, also known as arbitration, is a dispute resolution process in which the parties agree to submit the resolution of a dispute to an independent third party or arbitral tribunal.¹ This third party, or arbitrator, makes a decision, called an arbitral award or arbitral decision, which is binding to the parties.

¹ FERREIRA, D. B., GIOVANNINI, C., GROMOVA, E., SCHMIDT, G. R. Arbitration Chambers and trust in technology provider: Impacts of trust in technology intermediated dispute resolution proceedings",

It should be recognized that for quite a long-time arbitration in Russia was associated primarily with international commercial arbitration and was familiar from the practical side only to a small group of specialists. It is obvious that a specialist is accustomed and comfortable with what is familiar and understandable, at least from a theoretical point of view. Therefore, arbitration often seems to lawyers who do not have enough specialized knowledge in this area, more complex than the process in a state court, despite its greater dispositive and flexible procedure.

The main aim of the paper is to review the general development of arbitration proceedings in the Russian Federation. The use of legal comparative method allowed to study national and foreign legislation to formulate some conclusions related to the development of the arbitration procedure in the Russian legislation. The application of the formal legal analysis made it possible to formulate the understanding of the concept of the arbitration court from Russian perspective.

For readers' convenience at the beginning of the article, the author makes a brief historical excursion of the development of arbitration proceedings, starting from the twelfth century. Then, the author then examines the 2016 arbitration reform, its significance and the current state of arbitration in Russia. The author also provides a brief description and analysis of permanent arbitration institutions operating in the Russian Federation. At the end of the article, the author examines the current trends in the development of arbitration, as well as the challenges facing arbitration proceedings in Russia.

2 Arbitration Proceedings in the Russian Federation: The Genesis

The history of arbitration proceedings in Russia has ancient roots. Arbitration courts were first mentioned back in Old Russian times.

The history of specialized courts for commercial cases finds its origin in the Charter of the Novgorod Church of St. John the Baptist on Opoki in 1135,

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granted by Novgorod Feudal Lord Vsevolod Mstislavovich. In the 12th century, in Veliky Novgorod, parallel to the princely court, there was a trade court, which was divided into two parts: one to resolve conflicts between Russian merchants, and the other – a “mixed” court to settle disputes between Novgorod merchants and German “alderman”. This merchant court was created with the participation of the Ttysiatskii and five elected headmen. Nevertheless, the above-mentioned document does not consider the trade court as an innovation, but as an application of well-known rules to Ivanovo merchants.

It is interesting that both in Russia and in European countries the idea of specialized courts to resolve commercial disputes originated from where trade was particularly developed and where there were close ties with foreign merchants.

In the judicial practice of the First Russian state for commercial cases, exclusively court-ordered litigation was used. In rural areas, the most common way of dispute resolution was arbitration proceedings with the participation of elders and mediators. Another way was village assemblies, where they judged according to customs.

According to the essay of Vitsyn A.I., back in the 14th century there is documented evidence of the existence of an arbitration court in Russia, according to an excerpt from the treaty letter of 1362 of Great Prince Dmitry Ivanovich Donskoy with Prince Vladimir Andreyevich Khrabry: “And what I will seek against your boyars, or what you will seek against my boyars, we will send from each of us a boyar, they will judge, and if their votes are divided, then the third person, whom they choose, will judge them”.²

By 1911, a draft of the General Statement on Chambers of Commerce and Industry in Russia was prepared. In the section “Subjects of jurisdiction of the Chamber” Paragraph 12 of this draft provided that “the chambers, if there is an agreement between the parties, resolve disputes arising in the field of trade and industry, as an arbitration court, in compliance with the relevant legislative norms”. Unfortunately, this document was not adopted.

During the Soviet period, the functions of the arbitration court were delegated to stock exchange arbitration commissions, established in 1922 for commodity and stock exchanges. However, the most striking example of the embodiment of the idea of an arbitration court was the creation of the Foreign Trade Arbitration Commission (FTAC) in 1932 at the All-Union Chamber of Commerce. The decision on its creation was made on June 17, 1932, by the Central Executive Committee and the Council of National Commissars of the Union of Soviet Socialist Republics.

² VITSYN, A.I. Arbitration court on Russian law, historical and dogmatic reasoning (M., 1856).

Before the establishment of the Foreign Trade Arbitration Commission, there was no legislation regulating arbitration of foreign trade disputes in permanent arbitration bodies having a non-state character, neither in the legislation of the USSR nor in the legislation of the Union republics.

In the period of 1950-1960s, after the Second World War, economic activity in our country revitalized, the ideas of self-support and self-financing became popular. At the same time, public forms of government, including public forms of justice such as comradeship and arbitration courts, were also gaining importance. These trends partly drew the attention of the legislator to arbitration methods of dispute resolution in the economic sphere. The increasing role of arbitration courts was attributed to the desire to involve the public in tasks normally performed by government agencies. Arbitration proceedings were seen as another step in the transition from socialist statehood to public self-government.

On July 23, 1959, the Council of Ministers of the USSR adopted a resolution “On improving the work of state arbitration” which allowed arbitration of disputes between legal entities. This decision was considered by M.I. Kleandrov as the initial legal basis for the establishment of arbitration courts for the resolution of economic disputes at the current stage of development of legal regulation. It was aimed at using new forms of public involvement in resolving complex economic disputes between enterprises, organizations and institutions.

The modern understanding and development of arbitration proceedings began in the early 20th century. A special impetus to the development of arbitration proceedings was given during the period of perestroika and economic reforms of the 1990s.

3 Arbitration proceedings in the modern Russian Federation

The development of arbitration proceedings in modern Russia began in the early 1990s with the adoption of the Federal Law “On Arbitration Courts in the Russian Federation” in 1993. This law established the legal basis for arbitration procedures in Russia and provided an opportunity for more flexible and efficient resolution of commercial disputes.

Since the 1990s, arbitration proceedings in Russia have been actively developing, implementing modern international standards.

On September 1, 2016, the Federal Law dated December 29, 2015, No. 382-Φ3 “On Arbitration (Arbitration Proceedings) in the Russian Federation” (hereinafter – the Arbitration Law) came into force and replaced the Federal Law dated July 24, 2002, No. 102-Φ3 “On Arbitration Courts in the Russian Federation” (hereinafter – the Arbitration Law).

The reform of arbitration proceedings in Russia is due to the impossibility of the previously existing legislation on arbitration courts to ensure a high level of protection of subjective rights of participants in civil legal relations.

As a result of the reform of the institution of arbitration in Russia in 2016, arbitration institutions with the status of permanent arbitration institutions (PIAU) emerged. This status may be granted by the Ministry of Justice of the Russian Federation to a subdivision of a non-profit organization that performs arbitration administration functions on a permanent basis. At the moment, Russian arbitration centers with the status of PIAU include:

The International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC) is Russia's leading permanent arbitration institution administering primarily international commercial disputes, the successor to the Foreign Trade Arbitration Commission established at the All-Union Chamber of Commerce in 1932.

ICAC is among the largest and most authoritative arbitration centers recognized by both domestic and foreign businessmen.

Every year the ICAC receives from 250 to 300 international commercial disputes involving companies from 40-50 countries, which exceeds similar indicators of the leading arbitration centers of England, Sweden, and Germany.

The number of cases in which both parties are non-residents of the Russian Federation is growing annually.

The analysis of ICAC arbitration practice also indicates a trend towards an increase in the number of cases with large claims exceeding USD 10,000,000. The share of such cases over the last 5 years has increased from 3.5% to 23% of the disputes considered.

In 2017, ICAC celebrated its 85th anniversary. In total, ICAC has handled more than 10,000 cases over the years.³

The Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation (MAC), established in 1930, is today one of the oldest maritime arbitration tribunals in our country and in the world.

The IAC was originally established to consider only those disputes arising in connection with salvage of ships and cargoes at sea. Today, along with traditional disputes arising out of cargo transportation, chartering, marine insurance, salvage, collision between ships, fishing operations, the Commission's proceedings may include disputes arising out of brokerage and agency agreements, ship repair,

³ International Commercial Arbitration Court, <https://mkas.tpprf.ru/>.

ship management, fishing, and a variety of other relations arising in the field of merchant shipping.⁴

The Russian Arbitration Center at the Autonomous Nonprofit Organization “Russian Institute of Modern Arbitration” (RAC) is a permanent arbitration institution established at the Autonomous Nonprofit Organization “Russian Institute of Modern Arbitration” (RISA) and operating with the support of the Federal Chamber of Lawyers of the Russian Federation and the St. Petersburg International Legal Forum.⁵

The Arbitration Center at the All-Russian Public Organization “Russian Union of Industrialists and Entrepreneurs” is a permanent arbitration institution carrying out activities on administration of arbitration (arbitration proceedings) in accordance with the Federal Law “On Arbitration (Arbitration Proceedings) in the Russian Federation” and the Law of the Russian Federation “On International Commercial Arbitration”.

The right to perform the functions of the arbitration institution is granted to the Russian Union of Industrialists and Entrepreneurs on the basis of the order of the Government of the Russian Federation dated 27.04.2017 No. 798-p. The Arbitration Center is the legal successor of the Arbitration Court at the RUE (established in 2006), the Arbitration Commission at PJSC Moscow Exchange (established in 1994) and the Arbitration Court of the National Association of Stock Market Participants (NASMP) (established in 1997).

The National Center for Sports Arbitration at the autonomous non-profit organization “Sports Arbitration Chamber”, which is a permanent arbitration institution administering arbitration (arbitration proceedings) of disputes in professional and top-level sports, including individual labor disputes. Only it, according to Article 36.2 of the Federal Law No. 329-ФЗ “On Physical Culture and Sports in the Russian Federation” dated December 4, 2007, can administer all disputes in professional and high-performance sports, including individual labor disputes.

The Arbitration Institution under the All-Russian Industry Association of Employers “Union of Machine Builders of Russia” (the youngest permanent arbitration institution, which currently has the right to administer only domestic disputes).⁶

⁴ Maritime Arbitration Commission, <https://mac.tpprf.ru>.

⁵ MURANOV, A.I. Russian’ Institute of modern arbitration and “Russian” arbitration center: a study of their role in the arbitration sphere in the Russian Federation. GONGO-structures? Declarations and Reality. How the vertical of power works in arbitration (M., 2020).

⁶ Ministry of Justice of the Russian Federation, <https://minjust.gov.ru>.

Among foreign arbitration institutions, only the Hong Kong International Arbitration Center and the Vienna International Arbitration Center had such status until recently.⁷

4 The concept of arbitration court in Russia

In the previously existing legislation on arbitration courts the concept of “arbitration court” was disclosed through the indication of two main types in which it exists – “permanent arbitration court” (such courts are sometimes called “institutional”, “institution” and “arbitration court formed by the parties to resolve a particular dispute” (or arbitration court ad hoc – from Latin “for a given case”), which in the literature is also sometimes called “isolated arbitration court” or “isolated arbitration”).⁸

The above definition of the concept of “arbitration court” did not reveal the legal essence of this institution, did not define the features that separate arbitration courts from state courts and international arbitration.

In the legal literature, there are doctrinal definitions given to arbitration courts.

Thus, R.F. Kallistratova believes that “a lawyer, disclosing the term ‘arbitration court’, should emphasize in the study of its status as a permanent entity that it is a non-state law enforcement body, carrying out its activities on the basis of self-government, that the decisions of the arbitration court are sanctioned by the state, therefore have a mandatory-coercive character”.⁹

In its turn, Ya.F. Farkhtdinov writes that “arbitration courts, regardless of the forms of their organization, are public law enforcement jurisdictional bodies (courts) authorized by the state to resolve disputes of civil law character, and their activities have a legal, law enforcement character with all the ensuing legal consequences”.¹⁰

Another opinion was made by E.A. Vinogradova, that states: “Arbitration court is a person (persons) elected by the parties or appointed by them in a certain order, considering and resolving the dispute submitted to their consideration by agreement of the parties, in the order, also determined by these parties, and

⁷ MAIA, A., FLÓRIO, R.A. Online Dispute Resolution (ODR) / Mediação de Conflitos On-line Rumo à Singularidade Tecnológica? Revista Brasileira de Alternative Dispute Resolution – RBADR, vol. 5, n. 10, 39, 2023; PRESCOTT, J.J., SPIER, K.E., YOON, A. Trial and Settlement: A Study of High-Low Agreements. The Journal of Law & Economics, vol. 57, n. 3, 699, 2014.

⁸ LEBEDEV, K.K. Legal service of business (corporate lawyer) (M., 2001); KARABELNIKOV, B.R. Recognition and enforcement of foreign arbitral awards: Scientific and practical commentary to the New York Convention (Moscow: CJSC, “Yustitsinform”, 2001).

⁹ KALLISTRATOVA, R.F. Alternative legal proceedings for the resolution of economic disputes, Judicial system of Russia, 5, 239, 2000.

¹⁰ FARHTDINOV, Ya.F. The role of arbitration courts in the system of bodies for the protection of violated or challenged civil rights, Arbitration Court, 5/6, 35, 2006.

authorized to make a decision having for the parties the degree of binding force, which is directly or indirectly defined in their agreement”.¹¹

“Arbitration courts are non-state independent courts elected by the parties to a legal relationship themselves to resolve a dispute arising between them”.¹²

This statement quite succinctly formulates the essence of arbitration courts and indicates all their main features: non-state character; independent character; electability by the participants themselves; focus on the resolution of disputes.

Thus, in general, the researchers are in agreement. The arbitration court is understood as a non-state body, the purpose of which is to resolve a civil-law dispute, and which is elected by the participants of the disputed civil-law relationship themselves.

The new Arbitration Law defines an arbitral tribunal as “a sole arbitrator or a collegium of arbitrators”. An arbitrator (“arbitral judge”) is defined as “a person chosen by the parties or chosen (appointed) in the manner agreed upon by the parties or established by federal law to resolve the dispute by the arbitral tribunal”.

Thus, the legislator in the above definitions has fully reflected the legal character of the concept of “arbitration court”, namely, it is a jurisdictional entity of a private character designed to resolve civil-law disputes referred to it for consideration.

The new Arbitration Law retains the notion of “an arbitration court formed to resolve a specific dispute”. At the same time, the concept of “permanent arbitration institution” has been introduced, which is a subdivision of a non-profit organization that performs the functions of administering arbitration on a permanent basis.

The Arbitration Law establishes that the activities of arbitrators within the framework of arbitration (arbitration proceedings) are not entrepreneurial.

The arbitral tribunal, i.e., arbitrators, shall not be civilly liable to the parties to the dispute, as well as to the arbitral institution in connection with the non-performance or improper performance of the arbitrator’s functions, with the only exception: the damage caused as a result of the arbitrator’s culpable acts may be compensated in a civil action in a criminal case only on the basis of a court judgment that has entered into legal force.

It should be taken into account that arbitration courts do not belong to the judicial system of the Russian Federation,¹³ do not carry out justice and legal proceedings in civil cases, as state courts do it.

¹¹ VINOGRADOVA, E.A. Legal bases of organization and activity of the arbitration court (M., 2003).

¹² Commercial Law: textbook: in 2 parts; ed. by V.F. Popondopulo, V.F. Yakovleva. 3rd ed., revision and additions (Moscow, 2002).

¹³ Decision of the Constitutional Court of the Russian Federation of April 13, 2000, No. 45-O “On refusal to accept for consideration the appeal of the Independent Arbitration (Arbitration Tribunal) Court at the

One of the significant factors in the development of arbitration proceedings in Russia is the strengthening of the country's international position. With the growing number of international commercial transactions, there is a need for an effective mechanism of dispute resolution, which makes arbitration procedures increasingly in demand both inside and outside the country.

Arbitration proceedings in Russia play a key role in ensuring fairness and efficiency of dispute resolution in the commercial sphere. Its importance is due to several factors:

- Arbitration procedures provide faster, and more efficient dispute resolution compared to litigation, which reduces time and financial costs for the parties.
- The parties are able to choose their own arbitration procedures, rules and venue, which provides flexibility and adaptability to the specific needs and requirements of the case.
- Arbitration tribunals often specialize in certain types of disputes, which provides a deeper understanding of the context of the case and more competent decision-making.
- Arbitral awards are usually easier to enforce than judicial awards, which increases the efficiency of the enforcement process and builds confidence in arbitration as a dispute resolution mechanism.

5 Conclusion

Modern arbitration proceedings in Russia are in line with international trends in the field of alternative dispute resolution. In particular, with the increasing number of international commercial transactions and investments, there is a growing demand for dispute resolution mechanisms that would provide a high degree of protection of the rights and interests of parties from different countries. In this context, arbitration proceedings in Russia are becoming increasingly attractive for both domestic and foreign parties.

One of the important international trends is the development of digital technologies and their introduction into arbitration processes. In particular, the use of electronic platforms for arbitration procedures can significantly simplify access to arbitration, speed up the dispute resolution process and make it more transparent and efficient.

Another significant area for the development of arbitration proceedings is the strengthening of international cooperation in this area. Russian arbitration courts

Chamber of Commerce and Industry of the Stavropol area to check the constitutionality of Article 333 of the Civil Code of the Russian Federation" // Reference legal system "Garant".

actively cooperate with foreign partners, share experience and best practices, which contributes to improving the quality of services and the attractiveness of Russian arbitration for foreign parties.

However, despite the positive trends, arbitration proceedings in Russia also face challenges. One such challenge is the need to further improve the legal framework and legislation governing arbitration procedures. This includes the settlement of issues related to the application and recognition of arbitral awards abroad, as well as ensuring reliable protection of the rights and interests of the parties at all stages of arbitration proceedings.

It is also worth noting that due to global changes such as technological innovations, changes in the international political environment and economic trends, arbitration proceedings must constantly adapt and improve in order to effectively respond to the challenges and opportunities presented by modern business.

Thus, arbitration proceedings in Russia play a key role in the resolution of commercial disputes, ensuring that disputes are resolved quickly, efficiently and fairly within a framework of legality and fairness. Its development and importance continue to grow in the context of modern Russian and international legal practice, as well as under the influence of international trends in alternative dispute resolution. At the same time, arbitration proceedings face challenges that require continuous improvement and adaptation to changing conditions.

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